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Labor Violence: The Inadequate Response of the Federal Anti-Extortion Statutes

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I. INTRODUCTION

Of all kinds of human conduct, physical violence against person or property is undoubtedly the one which receives almost universal condemnation among civilized peoples. Even the fiercest of the classical liberals and modern libertarians, who view government's function very narrowly, recognize both the propriety and the necessity of state sanctions against aggression. Indeed, this may even be viewed as the *only* truly essential function of government, the nonperformance of which divests a corporated body of any legitimate claims to be our political sovereign. The state's control of violence is, in short, a very important matter.

Labor violence, however, has long been a major problem in this country. Perhaps the earliest reported instance of labor violence occurred in 1799 in connection with a strike among the cordwainers of Philadelphia. It involved numerous acts of misconduct, including the throwing of a tack-studded potato through a shop window, barely missing the head of the proprietor who had hired a "scab"[1]—a quaint but lethal way of making a point! The fifty-year period between 1880 and 1930 was especially marked by acts of violence commited in connection with the many strikes and lockouts of that era, which often took on the dimensions of "small wars."[2] In one two-year period, 1902-04, approximately 200 people were reported killed and over 2,000 injured in acts of labor violence.[3]

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1. Nelles, *The First American Labor Case*, 41 YALE L.J. 165, 176 (1931).
2. *See generally* J. BRECHER, STRIKE! (1972); S. LENS, THE LABOR WARS (1973); Taft & Ross, *American Labor Violence: Its Causes, Character, and Outcome*, in THE HISTORY OF VIOLENCE IN AMERICA 281-395 (1969).
3. NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA 288-89 (1969).

Although the days of company "armies" and the Molly McGuires[4] are thankfully gone, acts of violence continue to occur in labor disputes in this country. No hard data exists concerning the current scope and origin of this violence. It would appear, however, that when management opposition to unionization does go beyond the bounds permitted by law, it consists mainly of economic reprisals against union sympathizers,[5] although physical violence by management officials does occur occasionally.[6]

Violence appears to be a more extensive problem for the House of Labor. In some instances, it undoubtedly represents the "semi-official" policy of a labor union, a deliberate and all too effective tool for bargaining or organizing. In other instances, the official dereliction consists merely of a more-or-less passive indifference to the use of violence by rank-and-file members, including the failure by union leaders to take steps to prevent and correct these "unauthorized" acts. Also, there are still other instances of individual worker violence committed in open defiance of official and genuine union prohibitions against it. This conduct is of as much concern to responsible labor leaders as it is to the victims themselves.

At first glance it would appear that the law has responded fully and adequately to the problem of labor union violence. Such conduct is actionable under both the criminal[7] and the civil laws of every state,[8] and stiff penalties and high damage awards are certainly possible.[9] In addition, the federal Labor Management Rela-

4. The Molly McGuires, the name of a group whose *formal* existence is a matter of some historical dispute, is generally used to refer to the Irish miners who engaged in widespread acts of violence, sabotage and murder in the eastern Pennsylvania coal fields during the bitter strikes of the 1870's. *See generally* S. LENS, *supra* note 2, at 11-35.

5. This kind of conduct, of course, constitutes an unfair labor practice. Labor Management Relations Act §§ 8(a)(1), (a)(3), 29 U.S.C. §§ 158(a)(1), (a)(3) (1976).

6. The section 8(a)(1) prohibition against employer interference, restraint, or coercion of employees in the exercise of their statutory rights is certainly broad enough to also encompass acts of physical violence or intimidation. *See, e.g.*, Jacques Syl Knitwear, Inc., 247 N.L.R.B. No. 191 (1980). In 1979, however, only nine violations of this kind were found by the National Labor Relations Board.

7. Such things as assault and battery, riot, burnings, and trespass against land and chattels, all of which can easily occur within the context of a labor dispute, are routinely prohibited by the criminal codes of the various states. *See, e.g.*, S.C. CODE §§ 16-3-620, -5-70 to -140, -11-120 (1976).

8. *See* Comment, *Tort Liability of Labor Unions for Picket Line Assaults*, 10 U. MICH. J.L. REF. 517 (1977).

9. *See, e.g.*, Pipeliners Local 798 v. Ellerd, 503 F.2d 1193 (10th Cir. 1974); C.E. Thurston & Sons, Inc. v. Barber, 78 L.R.R.M. 2719 (M.D.N.C. 1971).

tions Act regards such violence as an unfair labor practice.[10] Although the use of injunctions is prohibited in the context of most labor disputes, the statutes seem to recognize an exception with respect to violence.[11] Furthermore, there are numerous other statutes, both state[12] and federal,[13] which either specifically or generally include labor violence within their ambit, or which have the potential of doing so.[14]

Despite the plethora of state and federal laws which potentially touch on the matter, the problem of labor union violence seems to persist. Even with due recognition that the law can never be expected to eradicate completely man's tendency toward aggression or to always provide a full measure of justice to its victims, the uneasy feeling remains that the law does not address the problem of labor union violence with the vigor that it should. The attitude seems to be that "boys will be boys;" that a certain amount of "animal exuberance"[15] is to be expected in the emotionally supercharged atmosphere of a labor dispute; and that, while this is to be regretted, the law should not over-react.[16]

This attitude can be seen in all three branches of government.

10. Labor Management Relations Act § 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A) (1976); Local 30, United Slate, Tile & Composition Roofers, 227 N.L.R.B. 1444 (1977); Union de Operadores y Conteros de la Industria del Cemento de Ponce, 231 N.L.R.B. 171 (1977); Teamsters Local 695, 204 N.L.R.B. 866 (1973).
11. Norris-LaGuardia Act §§ 3(e), 3(i), 29 U.S.C. §§ 104(e), (i) (1976).
12. *See, e.g.*, S.C. CODE § 41-7-70 (1976).
13. The Hobbs Act, 18 U.S.C. § 1951 (1976), which is the subject of this article, represents the primary attempt of Congress to deal with the *specific* problem of labor violence. The Labor Management Relations Act has a broader scope and direction.
14. *See, e.g.*, 18 U.S.C. § 241 (1976), prohibiting conspiracies to injure persons in the exercise of their federal rights. In United States v. DeLaurentis, 491 F.2d 208 (2d Cir. 1974), the court held, however, that this statute did not apply to violence by union officials against employees who were attempting to exercise their federal statutory right of refusing to participate in certain union activities. The court conceded that a violation *literally* existed, but went on to ask: "Can Congress have intended the consequences of such improper, but nevertheless not uncommon acts, to be up to ten years in prison, or a $10,000 fine, or both? The thought does more than give one pause; it brings one to a halt, and to a further, more careful look at the Government's position." *Id.* at 211.
15. Under the so-called "Thayer Doctrine," an employee who has been fired for engaging in conduct so designated is, despite the otherwise unprotected nature of the conduct, entitled to reinstatement if the employer has engaged in unfair labor practices which are *theoretically* assumed to have provoked such exuberance. The Board only draws the line where "the misconduct is so flagrant or egregious as to require subordination of the employee's protected rights [*sic*] in order to vindicate the broader interests of society as a whole." W.C. McQuaide, Inc., 220 N.L.R.B. 593, 594 (1975), *modified in other respects*, 522 F.2d 519 (3d Cir. 1977).
16. *See* United States v. DeLaurentis, 491 F.2d 208 (2d Cir. 1974).

Prosecution under the criminal statutes, especially at the state and local level, is reportedly lax in certain jurisdictions, perhaps because of the political sensitivity of the issue. Moreover, where vigorous attempts have been made to enforce these statutes against labor union violence, the administrative agencies and courts have often either construed the statutes so narrowly as to make them virtually worthless, or have judicially excluded labor violence from their coverage altogether. In addition, legislatures, especially Congress, have seemed either unable or unwilling to write statutes prohibiting labor violence with that degree of specificity that is apparently necessary in order to insure judicial and administrative enforcement.

In many respects, the federal anti-extortion statutes are an ideal microcosm of the problems that exist generally with respect to the law's response to labor violence. In particular, the history of these statutes and the cases construing them are an excellent example of the kind of legislative point and judicial counterpoint that has left the law in a virtual stalemate. Currently, as a part of the overall revision of the federal criminal code, the anti-extortion sections are being revised and their scope and applicability to labor union violence is again being hotly debated.[17] One cannot, however, fully appreciate the probable effect of the proposed changes except by reference to what has transpired before. The purpose of this article, thus, is to replow some ground that is concededly old in the hope that this may shed some useful light on the current controversy.

II. THE ANTI-RACKETEERING ACT OF 1934

A. The Legislative History

The original federal anti-extortion statute, known as the Anti-Racketeering Act,[18] was one of several bills that came out of the extensive investigations of "racketeering" conducted in 1933 by the Copeland Committee, a special subcommittee of the Senate Committee on Interstate Commerce.

As introduced in the Senate,[19] this bill did not specifically include or exclude the activities of labor unions. However, the Senate Report stated that "[t]he provisions of the proposed statute are limited so as not to include the usual activities of capitalistic combinations, bona fide labor unions, and ordinary business practices which are not accompanied by manifestations of racketeering."[20]

17. *See generally* § IV of text *infra*.
18. Ch. 569, 48 Stat. 979 (1934) (current version at 18 U.S.C. § 1951 (1976)).
19. S. 2248, 73d Cong., 2d Sess. (1934), 78 CONG. REC. 457 (1934).
20. S. REP. NO. 532, 73d Cong., 2d Sess. 2 (1934).

The report also stated that at that time "the nearest approach to prosecution of racketeers as such has been under the Sherman Antitrust Act."[21] However, it noted the limitations of that Act, as construed by the courts, in addressing this particular kind of abusive behavior. It is problematic, of course, whether framers of the Senate bill had in mind any of the cases in which the Supreme Court had found the Sherman Act to be inapplicable to various forms of strike violence.[22]

In any event, it is clear that S. 2248 was intended to go beyond the limitations of the Sherman Act in dealing with the problems of "racketeering" and violence in interstate commerce. It did this by separately prohibiting four things, as they would affect interstate commerce: (1) acts of violence, intimidation, or injury to person or property, or threats thereof; (2) extortion of money or other valuable consideration; (3) coercion of persons to join associations or make payments thereto; and (4) coercion of persons in the exercise of their rights to do or not to do as they choose.

This version of the bill passed the Senate with little or no debate. Moreover, it appears that the bill had been sent to the House before organized labor awoke to the possible implications insofar as labor activities were concerned. Senator Robinson, in belatedly requesting a reconsideration, stated: "Representatives of the American Federation of Labor informed me this afternoon that both bills [S. 2248 and a bill dealing with extortion by phone] might be very discriminatory against labor in this country, and that they wanted to be heard respecting them."[23]

It is not altogether clear why the AFL thought the bill was "discrimatory" or unfair to them. It seems unlikely that they believed that labor unions are simply entitled to a *blanket* exemption from the normal prohibitions against physical violence and extortion. In all probability labor feared that the historically elusive term "coercion" might be construed broadly to encompass, in addition to overt violence, the traditional labor activities of strikes and picketing, especially when such activities were directed at compelling an employer to recognize the union, to pay union wages, and to stop hiring non-union labor.[24] These objectives would certainly seem to

21. *Id.* at 1.

22. *See, e.g.*, United Leather Workers v. Herkert & Meisel Trunk Co., 265 U.S. 457 (1924); United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922).

23. 78 CONG. REC. 5859 (1934).

24. Under certain forms of the "conspiracy doctrine," labor activities could be considered actionable or, in legal contemplation, "coercive" if either the ends or the means were impermissible. Thus, non-violent strikes to obtain a closed shop could be enjoined in some cases. *E.g.*, Plant v. Woods, 176 Mass. 492 (1900); *see* T. HAGGARD, COMPULSORY UNIONISM, THE NLRB, AND THE COURTS 21-24 (1977). Organized labor, which had vigorously and more-or-less

be encompassed by the third and fourth provisions of the bill as summarized above. Moreover, strikes to obtain these objectives had been held to be beyond the reach of the Sherman Act, and organized labor knew that the bill was intended to expand that reach in some unspecified fashion. Thus, the fears of the AFL may not have been totally unwarranted.

The House was apparently receptive to whatever fears labor had concerning S. 2248. When the bill was reported out of committee,[25] it had been rewritten so as to prohibit (1) the use of force, violence, or coercion to obtain or attempt to obtain money or other valuable consideration, "not including, however, the payment of wages by a bona-fide employer to a bona-fide employee";[26] (2) the wrongful use of force to obtain the property of another without his consent; (3) conduct in furtherance of a plan or purpose to otherwise violate the Act; and (4) conspiracies to engage in conduct otherwise prohibited by the Act. A final proviso to the Act also stated "[t]hat no court of the United States shall construe or apply any of the provisions of this act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."[27]

The House Report, quoting a letter from the Attorney General, noted that

> The original bill was susceptible to the objection that it might include within its prohibition the legitimate and bona fide activities of employers and employees. As the purpose of the legislation is not to interfere with such legitimate activities but rather to set up severe penalties for racketeering by violence, extortion, or coercion, which affects interstate commerce, it seems advisable to definitely exclude such legitimate activities.[28]

Assured that the new bill had the complete approval of organized labor,[29] the House and the Senate passed the Act without further debate.

Despite the effort of Congress to direct the focus of the Act *toward* organized crime and *away from* organized labor, some of the first indictments under the Act were brought against labor union officials. Thus, it soon became necessary for the courts to clarify

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successfully opposed the "conspiracy doctrine" in other contexts, may have feared its resurrection in the form of this federal criminal law.

25. 78 CONG. REC. 11402-03 (1934).
26. *Id.* at 11403.
27. *Id.*
28. H.R. REP. NO. 1833, 73d Cong., 2d Sess. 2 (1934).
29. 78 CONG. REC. 11482 (1934) (remarks of Sen. Copeland).

the scope of the labor exemption. One such case ultimately wound its way to the Supreme Court.

B. The Case Law

In *United States* v. *Local 807, International Brotherhood of Teamsters*,[30] members of the union met trucks as they came into New York City and used threats and violence to obtain from the owners of these trucks the equivalent of a day's wage for driving and unloading the trucks within the city. In some instances the defendant unionists did in fact perform *some* work for which they nevertheless obtained *full* payment. In others, the owners paid the money but rejected the offers of the defendants to do the driving and unloading. There were also instances in which the defendants apparently either failed to offer to do the work or refused to do any work when asked.

The issue in *Local 807* boiled down to whether the unionists were using force to obtain "*wages* by a bona-fide employer to a bona-fide employee,"[31] thus bringing the events within the Act's exception in that regard. Although the *Local 807* case involved a now repealed portion of the Act, what the courts said in this case is important in evaluating the significance of the congressional repudiation of this interpretation, and in determining meaning of the Act as presently written.[32]

A number of competing interpretations were proffered in the opinions of both the court of appeals and the Supreme Court. However, the interpretation that was the most obvious and the most reasonable was dismissed out of hand by the court of appeals. Speaking of the exception, the court noted that "[t]heoretically it might indeed apply only to situations in which an employee procured by threats the payment of wages due under a contract which the employer had made without coercion."[33] In other words, a bona fide or uncoerced employment relationship must exist before the exception is even applicable.

Presumably, the unstated predicate of this interpretation was that actual physical violence can never really be considered a legitimate and bona fide labor union activity, insofar as the final proviso to the Act is concerned,[34] and that the specific exemption with respect to wages should, therefore, be narrowly construed. Limiting the exception to violence used by a real employee to obtain the

30. 118 F.2d 684 (2d Cir. 1941), *aff'd*, 315 U.S. 521 (1942).
31. Ch. 569, 48 Stat. 979 (1934) (current version at 18 U.S.C. § 1951 (1976)).
32. For discussion of the Congressional repudiation of *Local 807* and the current version of the Act, see § III-A of text *infra*.
33. 118 F.2d at 686.
34. *See* note 27 & accompanying text *supra*.

wages that are legitimately due him recognizes the general prohibition against violence, and at the same time, gives some meaning to the express words of the statute. Moreover, it makes sense to read the statute as recognizing a distinction between the use of force to obtain something that one is not entitled to without the consent of the other party (a wage contract), and the use of force to obtain something that one is actually entitled to (wages due under a previously consented to contract); the former but not the latter falls within the general meaning of the term "extortion,"[35] which was apparently the central concern of Congress in passing the act.

Nevertheless, the court had two objections to that interpretation. First, the court felt that there was no real distinction between using coercion to obtain a contract for wages, and using coercion to obtain the wages owed under an otherwise noncoerced contract. The court, however, was simply wrong in that regard; but the court's willingness to indulge in patently fallacious reasoning to reach that desired result is probably more important than the logical fallacy itself.[36]

More importantly, the court of appeals felt that the suggested interpretation would make the exception too narrow. The court noted that the exception was clearly intended to cover "labor disputes," that "[p]ractically always the crux of a labor dispute is who shall get the job and what the terms shall be," and that "[t]o confine the exception to cases where the original contract was voluntary would therefore leave out the great mass of instances in which the issue would ever arise."[37] This, however, simply begs the question of whether, with respect to the use of actual physical violence in contrast to the use of economic power, Congress intended the exemption to be narrow or broad.

In any event, the court of appeals obviously had to give the term "bona fide" some other meaning to avoid this particular interpreta-

35. The common definition of criminal extortion is as follows: "Extortion is a crime when . . . any person extorts that which is not due, or more than is due, or before the time when it is due." BLACK'S LAW DICTIONARY 525 (5th ed. 1979).

36. In order to demonstrate that there was no distinction between the two, the court noted that "if any employer is coerced into making a contract, the coercion ordinarily persists until the wages fall due, so that it is proper to speak of them as being 'obtained' by the original threats, or violence . . . ." 118 F.2d at 686. While that assertion may well be true, the converse cannot be inferred, namely that if the wages due are obtained through coercion, this necessarily means that the original contract was obtained in like fashion. Nevertheless, this is what would have to be inferred in order to be consistent with the court's notion that the statute recognized no distinction between these two uses of force.

37. 118 F.2d at 686.

tion. Accordingly, the majority held that the requirement of "bona fides" was not met and thus, the exception did not apply where the money was paid on a "pretext of service never in fact rendered."[38] Conversely, the exception was said to apply whenever the "employee really did the work for which he was paid."[39] However, the majority immediately expanded the exception to include payments made to a person who offered to do the work but whose offer was refused by the person being coerced to make the payments. It was on this specific point that the dissent parted company with remainder of the court.[40] The court noted that while it might be difficult to call such payments "wages," it would nevertheless be nonsensical to assume that Congress wanted to grant immunity to one who used coercion to the point of actually getting the job, but, at the same time, penalize another who did *not* persist "in pressing his unwelcome services upon the employer."[41] The court noted that this would "excuse the more heinous offense, and penalize the more venial."[42]

The majority also felt that interpreting "bona fides," to include any coercively obtained payments as long as work was performed or tendered was justified by reference to the evil that Congress intended to suppress by this Act. The court noted that what Congress had in mind was the "blackmail" that "organized gangs of bandits" had levied upon many small businessmen, especially in New York City.[43] Labor violence, *aimed at the legitimate objectives of obtaining jobs and higher wages*, was said to be an altogether different matter. The court noted:

> Congress might indeed have gone further than it did; it might have included payments extorted by threats for services rendered or offered; that too is a grave evil. But, grave as it is, it is of a different kind from that at which this act was aimed. The history of labor disputes is studded with violence which unhappily is not yet obsolete; but, although the *means* employed may be the same as those here condemned, the *end* is always different, for it is to secure work on better terms.[44]

This notion that the "legitimacy" of the *ends* somehow takes otherwise violent *means* outside the prohibitions of the statute has proved to be persistently appealing insofar as the courts are concerned. Although Congress expressly repudiated the Supreme Court decision which affirmed and restated this idea,[45] the theory was subsequently to reappear. Remarkably, it today represents

38. *Id.*
39. *Id.*
40. *Id.* at 690 (Hand, J., dissenting).
41. 118 F.2d at 687.
42. *Id.*
43. *Id.* at 688.
44. *Id.* (emphasis added).
45. *See* § III-A of text *infra*.

the prevailing interpretation of the amended statute.[46]

On appeal the Supreme Court again couched the issue in *Local 807* in terms of finding a correct construction of the wage proviso, and suggested three alternative interpretations. The Court first considered the possibility that "[t]he exception applies only to a defendant who has enjoyed the status of a bona fide employee prior to the time at which he obtains or attempts to obtain the payment of money by the owner."[47] Presumably, this interpretation had been considered and rejected by the court below. The Supreme Court rejected it, in part for the same reason—such a reading would allegedly exclude practically all labor disputes from the exemption, a result which the Court found incompatible with the probable intent of Congress. In addition, the Court found this interpretation inconsistent with the literal wording of the statute. The statute "does not except 'a *bona-fide employee* who obtains . . . wages from a bona-fide employer.' Rather, it excepts '*any person* who . . . obtains . . . the payment of wages from a bona-fide employer to a bona fide employee.' "[48] This is simply a disingenuous distortion of the suggested interpretation. The distinction underlying the interpretation focuses not on *who* uses coercion but *for whom* it is used. Coercion would be within the exception only when the person for whom it is used has an otherwise uncoerced employment relationship under which wages are owed.

The second possible interpretation considered by the Court was that the exception "does not apply if the owner's intention in making the payment is to buy 'protection' and not to buy service, even though the defendant may intend to perform the service or may actually perform it."[49] This was apparently the interpretation argued for by the government. However, the Supreme Court rejected it on the ground that the state of mind of the victim could not properly be decisive of the guilt of the defendant. The Court made it quite obvious that it viewed the exception as clearly contemplating the use of violence in labor disputes, as long as it was for a "legitimate" end.

> For example, the members of a labor union may decide that they are entitled to the jobs in their trade in a particular area. They may agree to attempt to obtain contracts to do the work at the union wage scale. They may obtain the contracts, do the work, and receive the money. Certainly Congress intended that these activities should be excepted from the prohibitions of this particular Act, even though the agreement may have contemplated the use of violence. But it is always an open question whether the employers' capitulation to the demands of the union is

46. *See* notes 152-53 & accompanying text *infra*.
47. 315 U.S. at 527-28.
48. *Id.* at 531.
49. *Id.* at 528.

> prompted by a desire to obtain services or to avoid further injury or both. To make a fine or prison sentence for the union and its members contingent upon a finding by the jury that one motive or the other dominated the employers' decision would be a distortion of the legislative purpose.[50]

Given later developments in Congress and before the courts, one cannot overemphasize the critical importance of this language. It *clearly* suggests that, in the Supreme Court's view, the first principle of the statute was that it was not intended to apply to violence aimed at attaining traditional labor goals. The victim's state of mind was rejected by the Court as a relevant consideration *only* because its use might operate in derogation of that principle. Since the instructions of the trial judge to the jury had suggested the controlling importance of the victim's intentions in paying the money, the Supreme Court necessarily found that the conviction had to be set aside, and it, therefore, affirmed the court of appeals.

Finally, the Court discussed a third possible interpretation over which the court of appeals was divided—namely, whether the trial judge erred in suggesting that payments for work not actually done could never be considered "wages," notwithstanding the defendants' willingness to do the work. In this regard, the Court noted that both the majority and the dissent below had agreed that the payment of money to one who refuses to do any work is clearly not within the exception, but that payments to one who actually does the work clearly is within the exception. The Court apparently concurred with that view and stated that "[t]he doubtful case arises where the defendants agree to tender their services in good faith to an employer and to work if he accepts their offer, but agree further . . . that he should pay an amount equivalent to the prevailing union wage even if he rejects their proffered services."[51] The Court resolved the doubt in favor of finding such payments to be "wages" for the purposes of the statute.

The Court said that in determining whether the exemption applied or not, "[t]he test must . . . be whether the particular activity was among or is akin to labor union activities with which Congress must be taken to have been familiar when this measure was enacted."[52] Referring to the so-called " 'stand-by' orchestra device, by which a union local requires that its members be substituted for visiting musicians, or, if the producer or conductor insists upon using his own musicians, that the members of the local be paid the sums which they would have earned had they performed,"[53] the Court concluded that the practice of accepting payments even

50. *Id.* at 532-33.
51. *Id.* at 534.
52. *Id.* at 535.
53. *Id.*

when the services are refused was within the contemplation of Congress and, therefore, within the exemption.

The Court's holding on this point provides even further evidence of its preoccupation with the notion that if the objective is a traditionally legitimate one from labor's perspective, then conduct aimed at obtaining it does not constitute "extortion," no matter how violent it is. This, in sum, seems to be the recurring theme of the *Local 807* decision.

Chief Justice Stone registered a strong dissent in the case. His dissent is important because many in Congress later referred to it expressly as evidencing the proper approach to the problem of labor extortion. Unfortunately, it is difficult to pinpoint exactly where in the analysis the Chief Justice parted company with his brethren. In his view the elements of an offense under the Act were: The defendants used force to compel the payment of money; these payments were made to purchase immunity from violence and for no other reason; and this end was knowingly sought by the defendants. With respect to the specific facts of the *Local 807* case, Chief Justice Stone clearly believed that illegal extortion occurs when an employer is forced to make payments for work not done, even when it is the employer himself who has elected not to use the services of an otherwise willing worker. He noted that "[u]nless the language of the statute is to be disregarded, one who has rejected the proffered service and pays money only in order to purchase immunity from violence is not a bona fide employer and is not paying the extorted money as wages."[54]

Moreover, the Chief Justice believed that the performance of some work did not necessarily bring forced payments within the exception. He cited with approval an instruction by the trial judge which stated that "[i]f . . . what the operator was paying for was not labor performed but merely for protection from interference by the defendants with the operation of the operator's trucks, the fact that a defendant may have done some work on an operator's truck is not conclusive."[55] Furthermore, he noted that "[t]he character of what the drivers or owners did and intended to do—pay money to avoid a beating—was not altered by the willingness of the payee to accept as wages for services rendered what he in fact intentionally exacted from the driver or owner as the purchase price of immunity from assault, and what he intended so to exact whether the proffered services were accepted or not."[56]

On the other hand, the Chief Justice did concede that "the procuring of jobs by violence is not within the Act . . . ." and that this

54. *Id.* at 540 (Stone, C.J., dissenting).
55. *Id.* at 542.
56. *Id.* at 540.

may include "the 'stand-by' job where no actual service is rendered . . . ."[57]

What one may synthesize from these various assertions is that, from Chief Justice Stone's perspective, the critical issue was what constituted the "essential purpose" of the transaction. If the "essential purpose" of the transaction is to exchange money in return for work done (or for someone being available to work, as in a "stand-by" situation), there is no violation of the statute even if violence is used to accomplish the transaction. On the other hand, if the "essential purpose" of the transaction is to exchange money in return for freedom from violence, a violation does exist even if work is done or offered to be performed. However, the Chief Justice did not suggest specific, objective indicia that can be used in identifying such purposes. He conceded, rather, that this is ultimately to be determined by a jury by reference to the perceived intent of the two parties. Since the instructions of the trial judge were consistent with Justice Stone's interpretation of the law, he believed that the convictions should stand.

The *Local 807* case virtually emasculated the Anti-Racketeering Act of 1934 insofar as its effectiveness as a tool against labor violence was concerned. Whether the case was consistent with the original legislative intent is hard to tell, given the obscurity and brevity of the legislative history on the issue. The intent of Congress sitting at the time the case was decided is, however, a different matter.

III. THE HOBBS ACT AMENDMENTS

A. Legislative History

Congressional reaction to the *Local 807* case was as swift as it was negative. Bills were introduced in the 77th,[58] 78th,[59] and ultimately the 79th Congress[60] to correct what Congress considered to be an outrageous decision. The legislative solution that ultimately prevailed, the so-called Hobbs Act,[61] was originally introduced in the 1943 session.[62] It passed the House that year,[63] but died in the Senate. It was reintroduced the following year and finally enacted

57. *Id.* at 541.
58. S. 2347, 77th Cong., 2d Sess. (1942); H.R. 6872, 77th Cong., 2d Sess. (1942); H.R. 7067, 77th Cong., 2d Sess. (1942).
59. H.R. 653, 78th Cong., 1st Sess., 89 CONG. REC. 3218 (1943).
60. H.R. 32, 79th Cong., 1st Sess. (1945), becoming Hobbs Act §§ 1-6, 18 U.S.C. § 1951 (1976).
61. 18 U.S.C. § 1951 (1976).
62. *See* note 59 *supra.*
63. The debates in the House on H.R. 653 were fairly extensive and are as much a legitimate source of legislative history from which probable legislative intent

into law.[64]

Fearful that *any* repetition of the exact language of the 1934 Anti-Racketeering Act would give the Supreme Court an excuse for adhering to the *Local 807* approach, Congress completely rewrote the law and took special pains to eliminate the specific language on which the decision was based. The new Act provided that:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.[65]

The terms "robbery," "extortion," and "commerce" were defined, and the final paragraph of the Act, the exact wording of which produced much debate, provided that "[t]his section shall not be construed to repeal, modify or affect" the Clayton Act, the Norris-LaGuardia Act, the Railway Labor Act, or the National Labor Relations Act.[66] Notably absent was anything akin to the wage exception of the 1934 Act. Indeed, an amendment again exempting "wages" from the coverage of the Hobbs Act was rejected on the specific grounds that this would simply open the door to another *Local 807* decision.[67]

The legislative history makes absolutely clear that Congress viewed the *Local 807* case as wrongly decided.[68] Thus, the Hobbs Act was *at least* written to require a contrary result on those identical facts, but how much beyond that Congress intended to go is a matter of speculation.

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may be deduced as are the debates on the identical bill in the following session. United States v. Enmons, 410 U.S. 396, 404 n.14 (1973).

64. After passing the House in independent form, 91 CONG. REC. 11922 (1945), the substance of the Hobbs Act was also incorporated into the Case Bill, H.R. 4908, 79th Cong., 2d Sess. (1945), which passed Congress but which was vetoed by President Truman, 92 CONG. REC. 674 (1946). Immediately after the veto, the Senate took up and passed the Hobbs Act as previously approved in independent form by the House, 92 CONG. REC. 7308 (1946), thus making it law in spite of the veto. *See generally* Comment, *Labor Law—A New Federal Antiracketeering Law*, 35 GEO. L.J. 362 (1947); Comment, *The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act*, 25 N.C. L. REV. 58 (1946).

65. 18 U.S.C. § 1951 (1976).

66. *Id.*

67. 91 CONG. REC. 11913-19 (1945). Speaking of the *Local 807* case, Congressman Sumners also said: "It was the purpose of the Judiciary Committee to prevent the rendition of that sort of decision by any court in the future, so the language upon which that holding was based was eliminated." *Id.* at 11909.

68. Congressman Hancock called the *Local 807* case "a gross misinterpretation of the law and a distortion of the intent of Congress." 91 CONG. REC. 11900 (1945). *See also* 88 CONG. REC. 2071, 5334-35 (1942); 89 CONG. REC. 3193, 3201, 3202, 3206-07, 3220 (1943).

To determine what impact the Hobbs Act was intended to have upon various kinds of violent labor union activity, one can conveniently break the legislative history down into five categories: (1) Congressional interpretations of the holding and the dissent in the *Local 807* case; (2) specific examples of the kinds of conduct the new Act was intended to reach; (3) interpretations of the "no repeal" proviso and the suggested alternative; (4) the basis of labor's opposition and the congressional responses thereto; and (5) the assertions of no intended "discrimination" for or against labor.

1. Interpretations of the Local 807 *Case*

Generally speaking, Congress read the *Local 807* case very broadly. The sponsor of one of the first bills introduced on the matter said the case "in effect, placed the Congress in the position of condoning and authorizing the use of force and violence in enforcing demands so long as such force and violence are practiced by members of labor organizations and unions."[69] Similarly, it was said that the case holds "in effect that the use of force and violence was not incompatible to the lawful settlement of disputes between employers and employees."[70] In the debates on the Hobbs Act as introduced the first time, one congressman said: "I think the intent of the Congress in the 1934 statute was to protect the lawful activities of organized labor. The construction put on it by the Supreme Court would authorize unlawful acts—certainly never intended by this Congress."[71]

In these and other instances the concern of Congress seemed to focus on the fact that the *Local 807* case allowed labor unions to use physical violence to enforce their demands against employers. It was, apparently, of no particular moment that in the *Local 807* case the demands specifically involved payments for unwanted, if not unused, labor. Assuming that the Hobbs Act was intended as a negation of a broad reading of the *Local 807* case, it follows that Congress intended to prohibit the use of all violence in the enforcement of labor union demands regardless of the particular nature of the demands.

On the other hand, a somewhat narrower interpretation of the *Local 807* case is reflected in the comments of Congressman Hancock, a proponent of the Hobbs Act. "[T]he Supreme Court," he said, "held that . . . members of Teamsters Union 807 in New York City were exempt from the provisions of that law when attempting by the use of force or the threat of violence to obtain wages for a

69. 88 CONG. REC. 2071 (1942) (remarks of Sen. Holman).
70. *Id.* at 5334-35.
71. 89 CONG. REC. 3202 (1943) (remarks of Rep. Gwynne).

job *whether they rendered any services or not.*"[72] This suggests that the objectionable aspect of the *Local 807* case that was being legislatively overruled pertained not to the permitted use of violence alone, but to its use to achieve that particular result. Consequently, an intent to negate that aspect of *Local 807* would not support an inference that Congress intended to prohibit *all* forcibly backed union demands.

Perhaps the clearest indication of what Congress intended by its repudiation of *Local 807* can be found in the fact that the dissenting opinion of Chief Justice Stone was repeatedly referred to in approving terms.[73] Indeed, at one point Congressman Whittington expressly stated that "[t]he real purpose of the bill is to remove any doubt about the interpretation of the act by the Chief Justice being correct."[74] Unfortunately, as has been seen, Mr. Justice Stone's opinion is somewhat obscure as to the Act's prohibition against violence in the labor context.[75]

2. Specific Examples of Prohibited Conduct

The examples given of the kind of union conduct the new Act was designed to reach are much more helpful than are interpretations of *Local 807* in assessing the legislative intent. The facts of the *Local 807* case were, of course, cited time and time again as being prototypical of the kind of abusive labor conduct Congress wanted to reach through the Hobbs Act,[76] but other examples were also given. Congressman Anderson spoke of where the Teamsters used force in connection with a demand that drivers entering San Francisco either become members of the union or use Teamster drivers while within the city.[77] He also spoke of the situation where, in support of an organizational drive among dairy employees, a Teamsters Union refused to haul the dairy farmers' milk into the city, resulting in considerable spoilage.[78] This was considered an act of "coercion" in the colloquial sense, and one which the proposed Act was intended to reach.[79]

Congressman Baldwin of Maryland cited the example of a strike in Baltimore where sabotage and other acts of violence had been directed against the employer and his property:

72. 91 CONG. REC. 11900 (1945) (emphasis added).
73. *See, e.g.*, 88 CONG. REC. 2071 (1942); 89 CONG. REC. 3206, 3210, 3217 (1943).
74. 89 CONG. REC. 3221 (1943).
75. *See* text accompanying notes 54-57 *supra.*
76. *See* note 68 *supra.*
77. 91 CONG. REC. 11904 (1945).
78. *Id.*
79. *Id.*

> This bill would not have been presented to the House if organized labor had recognized law and order in striking and in establishing their rights, *as they have a right to do.* Everyone can remember the taxicab strike in the city of Baltimore, . . . where cabs were overthrown, bricks thrown through the windows endangering the lives of people, innocent victims.
>
> . . . .
>
> Mr. Chairman, labor has a right to strike, but when labor perpetrates that sort of thing, they are going far beyond the bounds of reason. Certainly, I do not take the position that labor has not the right to organize or to strike, but when they do so they should abide by the . . . laws of decency. If they had done that, we would not have this legislation before the House today.[80]

Thus, it is relatively clear that these members of Congress intended the Hobbs Act to prohibit forms of labor violence other than the kind of "featherbedding" practices that were at issue in *Local 807.* It appears that the proposed Act was also intended to prohibit the use of violence and coercion to obtain otherwise legitimate objectives such as the organization of employees, membership in the union, the acquisition of work for union members, or a favorable collective bargaining agreement.

3. Debate Over the "No Repeal" Proviso

As drafted by Congressman Hobbs, the bill simply said that the four leading labor laws then in existence were not to be considered repealed, modified, or affected by the new legislation. Congressman Celler, however, proposed and strenously argued for an amendment which would have provided that "no acts, conduct, or activities which are lawful under [the four acts in question] . . . shall constitute a violation of this act."[81] Congressman Celler felt that as drafted the exception to the bill would *not* protect labor in the exercise of rights guaranteed by the other statutes; the "no repeal" language, he conceded, would continue to protect the exercise of those rights from prosecution *under the former statutes*, but not necessarily from prosecution *under the proposed Hobbs Act.*[82]

Congressman Celler's interpretation of the language was not a reasonable one. Language of this kind would normally be construed to mean that if any of the four labor statutes grant labor unions an affirmative right to engage in a particular kind of conduct, the Hobbs Act should not be construed as taking that right away. However, it was repeatedly pointed out that none of the four acts gave unions the affirmative right to engage in any acts of force and violence prohibited by the Hobbs Act.[83]

On the other hand, Congressman Celler's version of the excep-

80. *Id.* at 11918 (1945) (emphasis added).
81. 89 CONG. REC. 3220 (1943).
82. *Id.*
83. *Id.* at 3193, 3202.

tion would have seriously limited the scope of the Act insofar as labor union activities were concerned. It is reasonably apparent from his explanations of the proposed amendment that he construed the term "lawful" to mean "not illegal."[84] Saying that certain conduct is "not illegal" under a specific statute, as per Celler's version, is vastly different from saying that the statute makes such conduct a matter of "right." The Clayton Act,[85] for example, did not give labor unions an affirmative "right" to use force in the settlement of strikes; but the use of such force had also been held to be "not illegal" under that statute.[86] Arguably, under the Celler amendment it would not be subject to prosecution under the Hobbs Act either.[87] Thus, some labor leaders privately conceded that the Celler amendment would have nullified the Hobbs Act altogether, at least insofar as labor activities were concerned.[88] If an act was not already illegal under one of the four statutes, the Hobbs Act simply would not cover it.

Congressman Hobbs opposed the Celler amendment on slightly different grounds. He feared that if certain things which are generally "lawful" under the labor statutes were declared to be beyond the purview of the Hobbs Act, it would be construed as also excluding the pursuit of these "lawful" ends by "unlawful" means.[89] He said,

> Mr. Chairman, almost any crime may be committed while the perpetrator is engaged in otherwise lawful acts, conduct or activities.
>
> . . . Because a man is engaged in the perfectly lawful conduct of striking, is he guiltless if he commits rape?
>
> Picketing is lawful. But does that mean that a picket cannot be punished for stealing?
>
> The right of collective bargaining is guaranteed by law. Does that give collective bargainers the right to murder?
>
> . . . .
>
> Honestly and peaceably seeking employment is not only lawful, but commendable. However, it is equally lawful for one from whom employment is sought to refuse it. Does any sane and reasonable man contend that the right honestly and peacefully to seek employment gives the seeker the right to force employment or to beat the refuser?
>
> . . . .
>
> I submit that for these reasons the Celler amendment is dangerous, especially in view of the decision in the Local 807 case, which held that no matter how much violence might accompany a request for employment it

84. *See id.* at 3220.
85. 15 U.S.C. §§ 12-27 (1974).
86. *See, e.g.*, Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940) (Court held that labor union activity that was illegal under local law could be legal under the Sherman Antitrust Act).
87. *See* 89 CONG. REC. 3202 (1943) (remarks of Congressman Gwynne).
88. *Id.* at 3203, 3224 (remarks of Rep. Baldwin).
89. *Id.* at 3194-95, 3220-21 (remarks of Rep. Hobbs).

> was all right and you are perfectly innocent under the antiracketeering law. The same thing is true here. No matter what may be said about the Celler amendment, it still does not require, as do the acts to which it points, that lawful acts, conduct or activities must be done in a lawful and peaceful way. Without that or something like that the amendment should be defeated.[90]

The relevance and importance of this language used by the author of the Hobbs Act cannot be emphasized too strongly. In slightly different terms, what Congressman Hobbs was saying was that the fact that the objective or *end* is legitimate under one of the general labor statutes does not mean that such objective can be pursued by violent *means*. Rightly or wrongly, Congressman Hobbs feared that the Celler amendment would have that effect insofar as prosecutions under the proposed anti-extortion statute were concerned. Necessarily, Congressman Hobbs also believed that the statute as he drafted it did *not* have that effect. The Celler amendment was defeated.[91]

4. Objections to the Hobbs Act and the Responses

It is significant to note that, on a substantive level, the opposition to the Act was *not* grounded on the fact that it was to be a violation of federal criminal law for labor unions to use actual physical violence in furtherance of their organizational or collective bargaining objectives. The substantive objection, rather, was that the Act might be construed in such a way as to *also* preclude unions from pursuing these legitimate goals by the traditional methods of peaceful strikes and picketing. Congressman Celler, for example, noted:

> There are courts which have held that whenever workers seek to bring about a wage increase or other adjustment of their working conditions by a strike, however peacefully conducted, they are attempting to "force" their employer to grant the wage increase or grant the requested adjustment of their working conditions.[92]

He also feared that even a mere demand for a wage increase might be construed as an implied promise to strike if it were not granted, thus making it an illegal "threat."[93] Congressman Celler, concerned that the Hobbs Act might be similarly construed, also noted that "there are courts which have held that picketing, *however peacefully conducted*, is by its very nature an attempt to force the employer into action which he is not willing to take."[94]

Similarly, Congressman LaFollette said of the terms of the Act

90. *Id.* at 3220-21.
91. *Id.* at 3225.
92. 91 CONG. REC. 11901 (1945).
93. *Id.*
94. *Id.* (emphasis added).

that: "I think they are broad enough to cover a discussion between employees as to whether or not they shall join a union. Those things are often accompanied by heated discussions which might be called coercion and they would affect the right of labor to organize."[95]

The proponents of the bill, however, consistently denied these charges. It is important to note that the basis of their denial was *not* that the ends being sought in these examples were legitimate ones, thus putting the means being used to achieve them beyond the purview of the Act. Instead, they answered that *otherwise peaceful* strikes and picketing are not acts of force or violence; such acts are specifically protected by federal statute and could not, thus, be considered a violation of the Hobbs Act. This point was made repeatedly. Congressman Hancock, in responding specifically to the claims of Congressman Celler, said: "A moment ago the gentleman said the threat of a strike came within the definition of extortion. This bill merely prohibits the wrongful use of force or threats. That cannot apply to a threatened strike because strikes are lawful, they are not wrongful."[96] Similarly, in giving a negative response to the question of whether a threat to go on strike would constitute a violation under the proposed bill, Congressman Sumners said, "as I . . . understand this bill, there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions, unless somebody thinks it is legitimate for them to rob and extort."[97]

That robbery and extortion were intended to connote acts of physical violence is also evident in Congressman Gwynne's listing of what the government would have to prove in order to obtain a conviction under the statute—namely, that the conduct affects interstate commerce, that there be an actual taking of property, *and* that this be done "by violence, by personal violence, or by actual threats of personal violence."[98] Likewise, Congressman Fellows noted that "the so-called Hobbs bill is designed to make assault and battery and highway robbery unpopular. Its purpose is to protect trade and commerce [which would certainly include the negotiation of collective labor agreements and most other labor-related activities] against interference by violence, threats, coercion, or intimidation."[99]

Congressman Savage was concerned about the Act's effect on a

95. *Id.* at 11920.
96. *Id.* at 11902.
97. *Id.* at 11908.
98. *Id.* at 11903.
99. *Id.* at 11907.

"strike for better working conditions."[100] A response by Congressman Barden distinguished a *peaceful* strike from the type of activity the Act was designed to prohibit. Focusing on the means used to accomplish the ends sought, he said:

> Do not talk to me about the man on strike. If he were an honest gentleman, he would not commit such offenses as robbery or extortion while on strike or off strike.
>
> . . . The fact that a man is on strike certainly does not license him to be an outlaw. . . .
>
> Good honest men do not commit robbery. They do not commit burglary. They do not beat up innocent people. They do not extort money. Good honest men do not do those things.[101]

A few moments later Congressman Michener said that "this bill will not interfere with legitimate strikes"[102]—presumably referring to strikes which are both peaceful and directed toward an otherwise legal end.

Congressman LaFollette also shared the fears of labor that the proposed Hobbs Act might be construed too broadly. Nevertheless, he did agree that the use of force or violence, *even if it was to obtain wages*, should be clearly prohibited. Thus, he proposed an amendment to that effect and said:

> If we put a construction into this statute which states that a bona fide payment of wages from an employer to an employee *shall not include wages* or the transfer of a thing of value *which is obtained by violence* or the threat of use of violence, then we reach the situation we are attempting to reach . . . .[103]

The amendment was rejected presumably because the *Local 807* case caused the majority to avoid the "bona fide wages" language altogether and, instead, couch the prohibitions of the statute in even broader language. It would, however, be incongruous indeed to *now* construe the Act as not reaching as far as even its opponents were willing to go.[104]

On the other hand, the most commonly cited indication that the Act was *not* designed to reach *mere* strike violence is contained in the following exchange:

> Mr. MARCANTONIO. All right. In connection with a strike, if an incident occurs which involves—
>
> Mr. HOBBS. The gentleman needs go no further. This bill does not cover strikes or any question relating to strikes.

---

100. *Id.* at 11841 (remarks of Rep. Savage).
101. *Id.* (remarks of Rep. Barden).
102. *Id.* at 11843 (remarks of Rep. Michener).
103. *Id.* at 11846 (remarks of Rep. LaFollette) (emphasis added).
104. Nevertheless, such a result was, in effect, reached by the Supreme Court in United States v. Enmons, 410 U.S. 396 (1973), where the Court held that the use of violence to obtain a more favorable collective bargaining agreement (covering, among other things, the payment of wages) was not within the prohibitions of the Hobbs Act. *See* text accompanying notes 166-200 *infra*.

> Mr. MARCANTONIO. Will the gentleman put a provision in the bill stating so?
>
> Mr. HOBBS. We do not have to, because a strike is perfectly lawful and has been so described by the Supreme Court and by the statutes we have passed. This bill takes off from the springboard that the act must be unlawful to come within the purview of this bill.
>
> Mr. MARCANTONIO. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?
>
> Mr. HOBBS. Certainly.
>
> Mr. MARCANTONIO. That then could become an extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections in this bill.
>
> Mr. HOBBS. I disagree with that and deny it in toto.[105]

Congressman Gwynne also indicated that the Act was not intended to cover "a clash between strikers and scabs during a strike."[106] Presumably, Congressman Hobbs also had this kind of picket line violence in mind. If so, the import of what Congressman Hobbs was saying becomes clear. Based on what he said elsewhere in the record,[107] it is inconceivable that he intended to exempt violence simply because it occurred in conjunction with an otherwise legal strike. Although some of the opponents of the bill felt that "minor altercations on the picket line"[108] should not be treated as felonies, there is no basis for assuming that Congressman Hobbs or any other supporter of the bill intended any distinction between "major" and "minor" acts of violence.[109] Rather, Congressman Hobbs's statement must be viewed in the context of the specific crimes the bill purported to prohibit—extortion and robbery. The purpose of most picket line violence is to prevent persons against whom it is directed from entering the employer's premises, not to obtain money from them. It is difficult to see how such violence could be conceptualized as either extortion or robbery. In short, Congressman Hobbs was simply recognizing that the Act did not reach *all* violence, but only that which would fit within the legal definition of extortion or robbery.

5. The Intent Not to Discriminate For or Against Labor

The fifth category of legislative remarks shedding light on the intended scope of the Hobbs Act are those which indicated that the Act should not discriminate on the basis of whether the violent actor was or was not associated with a labor union. Many congressmen objected to the *Local 807* case because it seemed to

105. 89 CONG. REC. 3213 (1943).
106. *Id.* at 3202 (remarks of Rep. Gwynne).
107. *See* notes 89-90 & accompanying text *supra.*
108. 91 CONG. REC. 11901 (1945) (remarks of Rep. Celler).
109. United States v. Enmons, 410 U.S. 396, 410 n.20 (1973).

grant a special license to labor unions alone to use violence in the pursuit of their goals. For example, Congressman Hobbs said that the case "decided that no matter how much violence a *union* man might use *in seeking employment*, he could not be punished under the 1934 Anti-Racketeering Act."[110] He added,

> I am saying that is the effect of the construction put upon robbery committed while engaged in *otherwise lawful* conduct by the Supreme Court decision. No matter how much force is used, robbery is a perfectly innocent pastime, as Chief Justice Stone said, *if the perpetrator be a labor-union member seeking employment.*[111]

Similarly, it was also said that the *Local 807* case "in effect, placed the Congress in the position of condoning and authorizing the use of force and violence *in enforcing demands* so long as such force and violence are practiced by *members of labor organizations and unions.*"[112] Such favored treatment was clearly not acceptable to Congress; it was the nature of the act and not the status of the actor that Congress thought was of controlling importance, and the Hobbs Act was designed to implement that policy. On this point, the following exchange is revealing:

> Mr. SUMNERS of Texas. There is nothing in this bill dealing with persons connected with organized labor as such. It is just an attempt on the part of the Committee on the Judiciary to bring in a bill that will prevent this type of robbery in interstate commerce.
>
> Mr. MICHENER. That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and by robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a *legitimate union activity.*[113]

In other words, "[a]ll are treated alike and no group is given special permission to violate the law."[114] Moreover, as these remarks demonstrate, the legitimacy of a group's goal or objective is irrelevant.

A fairly clear pattern emerges from this legislative history. Congress did not intend to interfere with otherwise peaceful strikes and picketing. Yet, Congress did intend to prohibit the use of force, violence, and threats as a means of obtaining wages or other things of value from an employer despite the fact that obtaining such benefits might be otherwise completely legitimate. In other words, as brokers of employee services, labor unions were to be limited in the use of force to the same extent as were other brokers or sellers of commodities; in either instance, the effectuation

110. 89 CONG. REC. 3195 (1943) (emphasis added).
111. *Id.* (emphasis added).
112. 88 CONG. REC. 2071 (1942) (remarks of Sen. Holman) (emphasis added).
113. 91 CONG. REC. 11843-44 (1945) (emphasis added).
114. *Id.* at 11844 (remarks of Rep. Michener).

of the exchange through the use of force was to be prohibited as extortion.

B. The Case Law

Although even a cursory review of the legislative history clearly indicates that Congress intended the Hobbs Act to prohibit labor from using force or violence as a means of obtaining concessions from employers, the initial judicial reaction was still somewhat hesitant. For example, in *United States v. Kemble*[115] the Third Circuit Court of Appeals was faced with facts not unlike those in *Local 807*. A union official had used actual and threatened violence to cause an employer to hire a union member to unload a truck whenever it made deliveries to an RCA plant. These services were not otherwise desired by this employer. The court had little difficulty in finding that, on these particular facts, a violation existed. The court, however, did hedge somewhat when it stated that:

> The conclusion seems inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of wages. We say "in proper cases" advisedly. For it is not necessary that we here consider the great variety of circumstances in which coercion may be involved in the payment of wages. We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, *that payment of money for imposed, unwanted and superfluous services* such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce *is within the language and intendment of the statute.*[116]

Although the majority decision was cautious in construing the scope of the new Act, it still went too far in the opinion of dissenting Judge McLaughlin. Notwithstanding the legislative history, he felt that the disagreement Congress had with the *Local 807* decision was a relatively narrow one. He maintained that the Supreme Court there had held that: (1) the use of force to become a genuine employee (one who actually works and is paid for it) was within the "wage" exception, and (2) the use of force to compel the payment of wages when the services of the would-be employee are refused was also within this exception. According to Judge McLaughlin, Congress' quarrel with the decision and its repudiation thereof pertained only to the second point, and that the defendant's conduct in this case fell within the still exempt first point. As such, it merely represented "a reputable union's genuine attempt to organize a trucking corporation,"[117] which was not the kind of conduct that the Hobbs Act was intended to prohibit. Gen-

115. 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952).
116. 198 F.2d at 891-92 (emphasis added).
117. *Id.* at 895 (McLaughlin, J., dissenting).

erally, he felt that the use of violence by a labor union in pursuit of a legitimate goal, such as obtaining work for its members, is not a violation of the Hobbs Act; instead, it is a matter for state and local prohibition.

Judge McLaughlin's theory was rejected not only by the Third Circuit in *Kemble* but also, later, by the Supreme Court;[118] but not without first picking up some support elsewhere. In *United States v. Green*,[119] Federal District Judge Adair reversed a conviction on the grounds that the facts as alleged in the indictment did not state an offense under the Hobbs Act. The indictment, tracking fairly closely the language used in the *Kemble* case, charged that the defendant had used "actual and threatened force, violence and fear" to cause "wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers."[120] In concluding that this did not state an offense under the Act, Judge Adair relied on the proviso to the Hobbs Act which states that it was not designed to "repeal, modify or affect the provisions of . . . the Wagner Act."[121]

Given the legislative history of this section,[122] of which Judge Adair purported to have made "a personal investigation as to the intent of Congress,"[123] it is startling indeed to see how the section was used to support the result he reached. Noting that in several cases the Supreme Court had held that "a demand by a Union representative for 'feather-bedding' is not an unfair labor practice"[124] under the Wagner Act, Judge Adair stated, "[i]t seems incongruous that Congress intended that a lawful act"[125] under one statute would be punishable as a felony under another.

This reasoning is remarkable in two respects. First, it proceeds as if the Cellar version of the proviso had been adopted rather than the committee or Hobbs version. As previously discussed, Congressman Celler wanted the language to read, "no acts . . . which are lawful" under the labor statutes shall be considered unlawful under the Hobbs Act, with "lawful" apparently being equivalent to "not illegal."[126] Although Congress expressly rejected that ap-

118. *See* notes 130-38 & accompanying text *infra*.
119. 135 F. Supp. 162 (S.D. Ill. 1955), *rev'd*, 350 U.S. 415 (1956).
120. 135 F. Supp. at 162.
121. 18 U.S.C. § 1951 (1976).
122. *See* § III-A-3 of text *supra*.
123. 135 F. Supp. at 162-63.
124. *Id.* at 163. Judge Adair was undoubtedly correct in concluding that the union's objective in this case was "not illegitimate." This conclusion, as well as its significance insofar as the current law is concerned, will be discussed subsequently. *See* note 151 & accompanying text *infra*.
125. 135 F. Supp. at 163.
126. *See* note 84 & accompanying text *supra*.

proach, that is exactly the interpretation Judge Adair gave the statute.

In addition, Judge Adair simply ignored the warning of Congressman Hobbs that the "lawfulness" of the ultimate objective could not serve as a justification for the use of force to achieve it.[127] Congress, however, did apparently heed this admonition in that it rejected the Celler version which Hobbs said was susceptible to such a construction.

Nevertheless, Judge Adair concluded that—since obtaining wages, albeit for unwanted services, was within the defendant's "rights and responsibilities as a Union representative"[128]—no violation of the Hobbs Act existed even though violence was used to achieve that end. Instead, a violation is made out only when the end itself is "unlawful," as where the union representative is obtaining money for his own benefit.[129] Thus, on the question of the "legitimacy" of the end serving as an exoneration of violent means, Judge Adair was in line with the dissent in *Kemble*.

The Supreme Court, however, disagreed strongly. With respect to the notion that the Act applied *only* to a union official's attempt to obtain money for his own benefit, the Court simply noted that while the union officials in the *Local 807* case were not attempting to get the money for that purpose, the Congress clearly intended for the Hobbs Act to proscribe what they were doing.[130] Furthermore, the Court noted that "[t]he legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship"[131]—including, one would presume, the primary incidents of that relationship, namely the obtaining of work and the payment of otherwise legitimate wages.

With respect to Judge Adair's reliance on the proviso to the Hobbs Act which stated that it did not affect any of the several labor statutes the Court simply noted that: "There is nothing in any of those Acts, however, that indicates any protection for un-

127. *See* notes 89-90 & accompanying text *supra*.
128. 135 F. Supp. at 163.
129. *Id.* Most of the cases under the Hobbs Act have involved attempts by labor union officials to extort money for their own personal use. *See, e.g.*, United States v. Daley, 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978); Anderson v. United States, 262 F.2d 764 (8th Cir. 1959); United States v. Varlack, 225 F.2d 665 (2d Cir. 1955); United States v. Compagna, 146 F.2d 524 (2d Cir. 1944), *cert. denied*, 324 U.S. 867 (1945). In some instances the money was not obtained through the threatened use of physical violence, but through the threatened use of "economic force," *i.e.*, otherwise nonactionable strikes, picketing, and the like. How these cases fit into the conceptual scheme will be discussed at § III-C of text *infra*.
130. United States v. Green, 350 U.S. 415, 419-20 (1956).
131. *Id.* at 419 (footnote omitted).

ions or their officials in attempts to get personal property through threats of force or violence. Those are not legitimate means for improving labor conditions."[132] The Court footnoted five cases that presumably illustrated labor conditions or objectives which the labor statutes did not affirmatively permit a union to seek through "threats of force of violence," and which, therefore, fell within the parameters of the Hobbs Act when those means are used. Significantly, in four of these cases, as in *Green* itself,[133] what the unions were trying to attain was not intrinsically "unlawful" or "illegitimate": In *United Construction Workers v. Laburnum Construction Co.*[134] the object was to get employees to join the union and to get the employer to recognize it as the employees' representative; *Allen Bradley Local 1111 v. Wisconsin Employment Relations Board*[135] involved employer accession to the union's contract demand and employee observance of the picket line; *NLRB v. Fansteel Metallurgical Corp.*[136] dealt with employer recognition of and negotiation with the union over wages, hours and working conditions; and in *Kemble*[137] the object was to get the employer to hire certain union helpers. Only *United States v. Ryan*[138] involved an objective that was itself illegal—namely, the payment of money by an employer to the representative of his employees. Thus, it would seem that in *Green*, the Supreme Court was concerned with the use of force and violence to obtain payments, not with the "legitimacy" or "illegitimacy" of the payments themselves.

This, certainly, is how the lower courts viewed the matter on remand.[139] Following the Supreme Court decision, the defendants asked that the verdict be set aside on the grounds that it was not supported by sufficient evidence and that the trial judge erred in refusing to submit a particular instruction to the jury. The instruction in question would have been to the effect that if the jury finds that the defendant has a "labor dispute" of a jurisdictional nature with another union at the time of the alleged threats to compel the payment of wages to its members for unwanted services, the matter was beyond the scope of the Hobbs Act.[140]

The Court of Appeals for the Seventh Circuit rejected that argument, noting the Supreme Court's admonition that the four labor

132. *Id.* at 420 (footnote omitted).
133. *See* note 124 & accompanying text *supra.*
134. 347 U.S. 656 (1954).
135. 315 U.S. 740 (1942).
136. 306 U.S. 240 (1939).
137. 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952).
138. 350 U.S. 299 (1956).
139. *See* United States v. Green, 143 F. Supp. 442 (S.D. Ill. 1956), *aff'd*, 246 F.2d 155 (7th Cir.), *cert. denied*, 355 U.S. 871 (1957).
140. 246 F.2d at 160.

statutes referred to in the proviso (which do generally regulate "labor disputes") in no way sanction the use of force or violence. The court added:

> We agree with the decisions that this statute encompasses illegal conduct which may be an outgrowth of a labor dispute just as any other criminal conduct may result from activity originally lawful. The mere fact that conduct originates in exercise of a lawful function does not prevent the ramifications and extensions thereof from becoming unlawful.[141]

This *exactly* reflects the position that Congressman Hobbs took with respect to the Act. In sum, the *Green* decision on remand correctly stands for the proposition that the use of violence or threats of violence by labor union officials to enforce their demands, regardless of legitimacy, constitutes extortion under the Hobbs Act.

Despite the Supreme Court's willingness to construe the Hobbs Act broadly and as intended, judicial hostility to the Hobbs Act continued to surface. It was conceded that the express congressional reversal of the *Local 807* case necessarily meant that Congress intended to include a demand for wages for work not done within the prohibition of the Act. In addition, the *Green* case necessarily meant that, at the very least, a demand for wages for *unwanted* work was covered. As one court framed it, the final issue was whether the Act covered "violence to property as a part of a plan to extort a thing of value in the form of a collective bargaining agreement covering wages, hours and working conditions of *wanted* employees."[142] The issue was ultimately answered in the negative. But the path to that result was strewn with unfortunate distortions of the legislative history and embarrassing contortions of ordinary logic and semantics.

The first major case to reach the result was *United States v. Caldes*.[143] Since the United States Supreme Court was to later speak approvingly of this decision,[144] a detailed analysis is in order. First, the court took a narrow view of the disagreement between Congress and the Supreme Court's result in the *Local 807* case. It said that Congress thought *Local 807* was wrong in recognizing the union member's willingness to work as an excuse for violence, since this could be construed as also permitting the use of force to "bring about the hiring of unwanted, unneeded employees."[145] This particular result was predicated solely on the Supreme Court's interpretation of section 2(a) (the "wage exception"), and the fact that "[t]he legislative history of the Hobbs Act

141. *Id.*
142. United States v. Caldes, 457 F.2d 74, 75 (9th Cir. 1972).
143. 457 F.2d 74 (9th Cir. 1972). *See generally* Willis, *Labor Violence—The Judiciary's Refusal to Apply the Hobbs Act*, 28 S.C. L. REV. 143 (1976).
144. *See* United States v. Enmons, 410 U.S. 396, 409 (1973).
145. 457 F.2d at 77.

shows that the deliberate purpose of Congress was to eliminate Section 2(a)."[146] Thus, the court in *Calders* reasoned that the purpose of the Hobbs Act was *merely* to compel a contrary result in cases like *Local 807*, where the work is either unperformed or unwanted. The court concluded that:

> By eliminating Section 2(a) however, Congress did not intend to eliminate traditional labor or union activity, albeit militant, which has as its object legitimate ends. The exclusion was not meant to provide impunity to the terroristic and extortionate activities of union members, but to protect union activity directed toward legitimate labor goals even when militantly pursued.[147]

The court then noted that the *Green* case fell within this pattern, since the purpose of violence there was to obtain wages for "imposed, unwanted and superflous or fictitious services."[148] The court also distinguished other lower court cases which had found that "extortion occurred when a union member tried to *foist* himself or another union member on an employer by threats of force and violence."[149]

What the court seemed to ignore was that Congress did not merely repeal the "wage exception" which was the technical basis of the *Local 807* case. Instead, Congress, entirely rewrote the Act for the express purpose of precluding decisions *like* that in *Local 807*.[150] This suggests a broad rather than a narrow congressional overruling of the decision. Given the repeated emphasis in the debates on the element of violence, it is more likely that it was this aspect of the *Local 807* facts that Congress found offensive—not just the objective to which the violence was directed.

Moreover, euphemisms and pejoratives are no excuse for sound analysis. Pouring paint on the employer's trucks and the clean laundry he was delivering, as in *Caldes*, is no more acceptable when it is called "militant," (in the court's language) than it is when it is called "the use of violence against property." At a more substantive level, the fact that something can be disapprovingly called "foisting" one's "unwanted and superfluous or fictitious services" on an employer does not necessarily preclude that conduct from also being called a "legitimate labor goal." Thus, the distinction articulated by the court is totally without substance.

A classic example of this is the *Green* case. The union there simply wanted the employer to hire union members to scout ahead of bulldozers and warn the drivers of approaching pitfalls; the employer felt that this was an unnecessary precaution. But whatever

146. *Id.* at 76.
147. *Id.*
148. *Id.* at 77.
149. *Id.* (emphasis added).
150. *See* notes 69-71 & accompanying text *supra.*

the dis-economies of the situation, this kind of job acquisition and work sharing among union members is a traditional, legitimate, and otherwise entirely legal objective and purpose of American labor unions.[151] Stated differently, it was as legitimate for the union in *Green* to want to induce the employer to hire an additional man to walk in front of the bulldozer as it was for the union in *Caldes* to want to induce the employer to enter into a collective bargaining agreement. In short, the court really did not succeed in distinguishing the violence in the case before it from the violence in *Green*—not, at least, by reference to the alleged "legitimacy" of the goal.

The court, however, attempted to justify its distinction on another basis. It noted that the language of the Hobbs Act was derived from the New York extortion statute, and under that statute strikes and picketing had been found not to constitute "extortion" *if* the purpose was to accomplish some legitimate labor objective, such as organization; but such conduct was actionable when merely "used as a pressure device to exact the payment of money as a condition of its cessation."[152] The Hobbs Act had been similarly construed, the court noted, in a case where a labor leader had threatened to call a strike unless the employer paid him some "under the table" money.[153] From this the court apparently concluded that the illegitimacy of the objective is *always* a necessary element in a Hobbs Act violation. This reasoning, however, is fallacious.

The distinction adopted by the New York cases with respect to strikes can be understood only in a historical perspective.[154] At one time in the history of American labor law, under the so-called

151. Although the Labor Management Relations Act § 8(b)(6), 29 U.S.C. § 158(b)(6) (1976) contains a so-called "anti-featherbedding" provision, it would not prohibit the kind of conduct that was involved in *Green*. In American Newspaper Publishers Assoc. v. NLRB, 345 U.S. 100 (1953), the Court noted that the LMRA "limits its condemnation to instances where a labor organization or its agents exact pay from an employer in return for services not performed or not to be performed." *Id.* at 110. This conclusion is bolstered by Senator Taft's observation that although the Senate did not approve of featherbedding in the broader sense, it "felt that it was impractical to give a board or a court the power to say that so many men are all right, and so many men are too many." 93 CONG. REC. 6441 (1947). Moreover, a demand for the kind of work that was involved in *Green* would not only be a legitimate subject of bargaining, but also a mandatory one. As the Court in *American Newspaper Publishers* put it, the Act "leaves to collective bargaining the determination of what, if any, work, including bona fide 'made work,' shall be included as compensable services." 345 U.S. at 111.

152. 457 F.2d at 78.

153. United States v. Kramer, 355 F.2d 891 (7th Cir. 1966).

154. *See generally* T. HAGGARD, COMPULSORY UNIONISM, THE NLRB, AND THE COURTS 11-24 (1977), which contains, from a slightly different perspective, a

"conspiracy doctrine," strikes and picketing were sometimes said to be inherently coercive, because of the economic injury-in-fact that they caused the person to whom they were directed. However, even before the matter was almost totally preempted by federal statutory law, some of the common law courts had moved considerably away from that position and had adopted a "means/ends" approach. This approach declared the concerted activities of labor to be actionable or coercive only if they involved either "unlawful means"—conduct which was itself criminal, tortious, or perhaps even in breach of contract—*or* "unlawful ends"—a term capable of being construed as including almost anything a judge might find to be offensive.

Although this approach is certainly no longer the primary device for measuring the legality of strikes (that function having been assumed by the various federal labor statutes), ghosts of the theory do sometimes emerge in analgous contexts where the issue is whether an *otherwise peaceful* strike or picketing falls within the purview of some general statute prohibiting "acts of force" or "coercion." In such a case, if a violation exists at all it must necessarily be because the objective itself is unlawful or illegitimate.

The New York case, relied on by the *Caldes* court,[155] held that the otherwise peaceful picketing (the "means") became a coercive exercise of force only when the objective shifted from attempting to organize the employer (a legitimate "ends") to obtaining money from him as a condition of stopping the strike (an illegitimate "ends"). However, if this holding was merely a reflection of the historically pervasive "means/ends" theory of coercion, it becomes readily apparent that one cannot deduce from it what the *Caldes* court deduced—namely, that *no* strike can be considered coercive unless the ends are illegitimate. To the contrary, under the "means/ends" approach a *violent* strike is coercive regardless of its objective; and there is nothing in the New York case to suggest otherwise. Thus, the *Caldes* court's reliance on that authority was misplaced.

Finally, at the policy level, the *Caldes* court simply noted that labor unions should be allowed great latitude in pursuing the interests of their members and that "[t]he expansive interpretation of 'extortion' used in the Hobbs Act as urged by the Government would make criminal the activities of many militant labor organizations."[156] The court contended, for example, that a strike in violation of a contractual no-strike clause would be a " 'wrongful' use

comprehensive overview of the evolution of the "criminal conspiracy" doctrine.

155. People v. Dioguardi, 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960).

156. 457 F.2d at 78.

of force"[157] and thus, constitute criminal conduct under the Government's view. This is a somewhat puzzling assertion, since it would seem that a strike in violation of a "no-strike" clause would also be a violation under the court's approach. The objective of such conduct certainly could not be denominated a "legitimate labor goal"; thus, by analogy to the New York cases, a strike to obtain that objective could be considered "coercive" and, therefore, a violation of the Hobbs Act.

As a second example of the possible overbreadth of the Government's approach, the court noted that "[s]pontaneous and sporadic fighting on the picket lines could also be condemned as the use of wrongful force and as extortion if [the Government's] view was allowed to prevail."[158] The court then indicated that in the year following passage of the Hobbs Act Congress passed the Taft-Hartley Act, containing "specific provisions which condemned this action as unfair labor practices."[159] Furthermore, the court noted that during the debates on the Taft-Hartley Act, "no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress."[160]

The court's reasoning here is both obscure and factually incorrect. In the first place, the section of the Taft-Hartley Act to which the court specifically referred primarily prohibits secondary boycotts or union attempts to require a neutral employer to stop doing business with the employer with whom the union has a dispute.[161] Although violence can occur in connection with such boycotts, it is certainly not a necessary element of the offense. Moreover, even if violence did occur in a specific situation, the objective of a secondary boycott is to force the victim to stop doing business with someone else, not to force him to pay the union money or anything else of value, *as is required in order for the crime of extortion to exist.* In short, what the Taft-Hartley Act prohibited and what the Government in the *Caldes* case claimed that the Hobbs Act prohibited were two entirely different things. Thus, even if there had been no mention of the Hobbs Act during the Taft-Hartley Act debates, this would have in no way shown that the Government's interpretation of the Hobbs Act was overly broad.

As a matter of fact, however, the court was simply wrong in suggesting that during the Taft-Hartley Act debates no one referred to the prohibitions of the Hobbs Act insofar as strike violence is con-

157. *Id.*
158. *Id.*
159. *Id.*
160. *Id.*
161. *See* Labor Management Relations Act § 8(b)(4)(A), 29 U.S.C. § 158(b)(4)(A) (1976).

cerned. In addition to making secondary boycotts, organizational picketing, and jurisdictional disputes unfair labor practices, the Taft-Hartley Act gave federal courts jurisdiction over private damage suits brought by a person injured as a result of such conduct. Senator Aiken, however, wanted to add an amendment which would also allow for injunctive relief in certain situations. He was specifically concerned with the small farmer who could not deliver his produce because of a labor dispute at the market, and for whom a damage action would be impractical. Senator Pepper, in discussing the proposed amendment said: "I do not recall exactly the terms of it, but last year we passed the Hobbs bill, the so-called antiracketeering bill, which gave jurisdiction to the federal court to act with respect to interruptions of and interference with people delivering their goods, in the way I think the Senator from Vermont has in mind."[162] Senator Aiken, however, responded:

> It has developed that the Hobbs bill was not worth the paper upon which it was written, so far as affording any protection to the farmer was concerned, because the farmer is not *molested* in taking his crop to the market, but when he arrives there may find that the commission man has an agreement for a closed shop, and the farmer cannot unload his produce, and therefore is turned back.[163]

Discounting the hyperbole, Senator Aiken was saying that the Hobbs Act is inadequate to solve the problem totally because it only applies to situations where the farmer has been "molested." The restraints upon delivery that are caused by certain kinds of agreements, secondary boycotts or jurisdictional strikes cause just as real an injury to the farmer, but are not covered by the Hobbs Act. However, the correlative of his statement is that the Hobbs Act does, in fact, cover acts of "molestation," including those that occur in connection with union activities that were, at the time he made this statement, not otherwise illegal under the existing labor statutes. In short, it would seem that the 1947 Congress *was* aware that the Hobbs Act applied to acts of violence aimed at achieving ends which were not otherwise illegal. This would tend to support the Government's position in the *Caldes* case rather than refute it.

In summarizing its overbreadth argument, the court noted that "it appears to us that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts and it is doubtful if Congress intended . . . to elevate this type of conduct to the level of the federal court."[164] The opponents of the Hobbs Act, of course, made exactly the same kind of assertion.[165] However, it was of no moment to the *Caldes*

162. 93 CONG. REC. 4860 (1947).
163. *Id.* (emphasis added).
164. 457 F.2d at 79.
165. *See, e.g.*, 89 CONG. REC. 3201, 3225 (1943); 91 CONG. REC. 11901 (1945).

court that the majority of Congress apparently felt otherwise.

As specious as the reasoning in the *Caldes* case was, the same result was eventually reached by the United States Supreme Court without any firmer basis insofar as legislative history or analysis is concerned. In *United States v. Enmons*,[166] the defendants were indicted for firing high-powered rifles at three utility company transformers, draining the oil from a company transformer, and blowing up a transformer substation owned by the company—all done for the purpose of obtaining higher wages and other employment benefits from the company for the striking employees. The indictment was, however, dismissed by the district court on the theory that the Hobbs Act did not prohibit the use of violence in obtaining "legitimate" union objectives.[167] On appeal, the Supreme Court affirmed, advancing four separate justifications for its conclusion.

First, the Court focused on the fact that the statute prohibited only the "wrongful" use of force to obtain property.[168] The Court noted that Congressman Hobbs intended the term "wrongful" to modify the entire section;[169] if it modified only the term "force" it would be redundant because any force to obtain property is wrongful. Therefore, the Court concluded that " 'wrongful' has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property."[170] The Court then added: "Construed in this fashion, the Hobbs Act has properly been held to reach instances where union officials threatened force or violence against an employer in order to obtain personal payoffs, and where unions used the proscribed means to exact 'wage' payments from employers in return for 'imposed, unwanted, superfluous and fictitious services' of workers."[171]

There are a number of things critically wrong with the Court's reasoning. First, the dilemma posed by the Court—"either construe the Act this way or make it redundant"—is essentially false since there are other possible interpretations. For example, one court of appeals previously suggested that "wrongful" referred to conduct constituting a breach of the peace in contrast to merely

166. 410 U.S. 396 (1973).
167. United States v. Enmons, 335 F. Supp. 641 (E.D. La. 1971), *aff'd*, 410 U.S. 396 (1973).
168. Specifically, the Act defines extortion as "the obtaining of property from another, with his consent, induced by *wrongful* use of actual or threatened force, violence or fear . . . ." 18 U.S.C. § 1951(b)(2) (1976) (emphasis added).
169. 410 U.S. at 399 n.2.
170. *Id.* at 400.
171. *Id.* (footnotes omitted).

tortious conduct.[172] This interpretation gives the term "wrongful" a meaning as a modifier of the term "force" that is certainly as reasonable as the interpretation suggested by the Supreme Court.

A more compelling explanation of the intended meaning of the term "wrongful" can, however, be found through a thoughtful reading of the legislative history. As previously indicated, many of the opponents of the Hobbs Act were fearful that the Act would be construed to prohibit legitimate strikes and picketing.[173] Some of them even suggested that a strike is, by definition, the assertion of a form of force.[174] The Hobbs Act proponents answered, of course, that the right to strike was protected by various federal labor statutes; that the rights affirmatively guaranteed by those statutes were not taken away by the Hobbs Act; but that there was nothing in those statutes which gave unions the right to use violence in the course of the exercise of the right to strike.[175]

It is against this background that Congressman Hobbs assertion that the term "wrongful" "qualifies the entire section" must be viewed.[176] Congressman Voorhis, who was not an enthusiastic supporter of the bill, wanted to make sure that a simple threat to go on strike for higher wages would not be construed as extortion under the Act. He was advised that it would not. He then immediately asked the additional question, "Does the word 'wrongful' apply to entire section?"[177] Presumably he wanted to make doubly sure that a *peaceful* strike would also not be considered wrongful under the Hobbs Act. Congressman Hobbs, in response to the question, then said that term wrongful "qualifies the entire section."[178] Congressman Hobbs undoubtedly intended this statement to assuage Congressman Voorhis' fears that the Act, notwithstanding the proviso, might be so broadly construed as to prohibit even peaceful strikes. In other words, Congressman Hobbs was saying that even if strikes are considered a form of coercion or force, they are not "*wrongful* force" unless accompanied by violence. This interpretation easily removes the redundancy which so concerned the Court.

172. Bianchi v. United States, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955).
173. *See, e.g.*, 89 CONG. REC. 3194, 3218 (1943); 91 CONG. REC. 11901 (1945).
174. Congressman LaFollette, for example, said that "[o]f course, there is an element of coercion in strikes. It is the only right labor has." 91 CONG. REC. 11920 (1945).
175. *See* 89 CONG. REC. 3193, 3202 (1943); 91 CONG. REC. 11904-05 (1945).
176. This assertion, and other matters summarized in the text, occured in the course of remarks among Congressmen Voorhis, Sumners, and Hobbs, recorded at 91 CONG. REC. 11908 (1945).
177. *Id.*
178. *Id.*

Even if the Court correctly concluded that the operative effect of the term "wrongful" in the statute is to identify the objective toward which the force must be directed in order for it to constitute extortion, the Court's reasoning on this point is still subject to question. It is based on the strange assumption that a person has no "lawful claim" to wages which are paid for unwanted services, as in the *Green* case, but that he does have such a claim to wages higher than those the employer would voluntarily pay in the absence of force "in return for genuine services which the employer seeks,"[179] as in the *Enmons* case. However, the distinction is analytically vacuous. A person has a no more "lawful claim" to work at $5.00 an hour for an employor who wants to pay only $4.75 than does another person who wants to work for an employer who does not want this person's services at all. In either case, the would-be employee's "lawful claim" to wages is dependent upon the employer's voluntary or noncoerced agreement to pay such wages. Nevertheless, on the basis on a non-existent distinction, the Court would apply the statute in one case but not the other.

The Court's second justification is somewhat related to this latter point; the Court simply claimed that "[t]he legislative framework of the Hobbs Act dispels any ambiguity in the wording of the statute and makes it clear that the Act does not apply to the use of force to achieve *legitimate* labor ends."[180] To support this extraordinary proposition, the Court first relied on the fact that Congress undoubtedly wanted to overrule the *Local 807* case which had permitted union members to "use their protected status to exact payments from employers for imposed, unwanted, and superfluous services"[181]—presumably *not* a "legitimate" labor objective, although the Court does not explain why. Assuming that overruling that aspect of the *Local 807* case was the limited intent of Congress, the Court then inferred an intent *not* to prohibit violence in the pursuit of "legitimate" objectives. In support of this conclusion, the Court referred to several assertions made during the debates to the effect that the bill was not intended to interfere "with any legitimate activity on the part of labor people or labor unions."[182]

This chain of reasoning is weak at almost every link. For example, the Court did not provide an *objective* basis for distinguishing "legitimate" labor goals from "illegitimate" ones—a basis which could be used to differentiate the objectives being pursued by the union in *Green* from those being pursued by the labor union in

179. 410 U.S. at 400.
180. *Id.* at 401 (emphasis added).
181. *Id.* at 403.
182. *Id.* at 404 (quoting 91 CONG. REC. 11908 (1945) (remarks of Rep. Sumners)).

Enmons.[183] In neither case were the objectives independently illegal, that is, illegal regardless of the means used to achieve them. Also, while it is undoubtedly true that Congress intended to reverse the *Local 807* case, an impartial reading of the legislative history suggests that Congress was *at least* as concerned with the means that were being used in that case as it was with the ultimate objective being pursued. Finally, the statements relied upon by the Court to the effect that the Act would not affect "legitimate" labor activity must be construed in *pari materia* with the more specific assurances that this result would be accomplished by the proviso guaranteeing that the existing labor statutes would not be modified or repealed. This guarantee was, however, tempered by the repeated reminder that these statutes in no way gave labor unions the right to use force or violence.[184]

In short, from conclusion that the Act was not intended to prohibit "legitimate" labor activities, one simply cannot infer that the legitimacy of the objective justifies whatever means are used to achieve it.

The inference not only does not flow from the legislative history; indeed, it is affirmatively contradicted by it. Congressman Hobbs' *single* objection to Congressman Celler's amendment was that it would allow conduct which was aimed at "lawful" ends to escape the prohibitions of the Act even though the conduct itself was "unlawful."[185] By rejecting the Celler amendment, Congress necessarily also rejected the interpretation given to the Act by the Supreme Court in *Enmons*: that the legitimacy of the ends sought remove whatever means are used to achieve them from the prohibitions of the statute. Furthermore, while the Court was correct in saying that the Celler amendment was rejected because it "would have operated to continue the effect of the *Local 807* case,"[186] the Court was grossly incorrect in asserting that it was done "solely"[187] for that reason, and that "undoing the restrictive impact of that case"[188] *merely* means that violence directed at otherwise "illegitimate" ends is now illegal under federal law. To

183. In *Enmons*, the objective of the violence was simply to obtain a more favorable collective bargaining agreement, an obviously legitimate goal in itself, while in *Green* the objective was to obtain job opportunities for union members, a similarly legitimate and entirely traditional goal of the labor movement. *Cf.* United States v. Green, 246 F.2d 155, 160 (7th Cir. 1957) ("There is no doubt that unions have the right to settle disputes [such as the one involved in that case] peacefully by means of negotiation . . . ."); *see also* note 151 *supra*.

184. *See* notes 173-78 & accompanying text *supra*.

185. *See* notes 89-90 & accompanying text *supra*.

186. 410 U.S. at 408.

187. *Id.*

188. *Id.*

the contrary, it would appear that the legislative overruling of *Local 807* had a much broader purpose.

The *only* specific language in the legislative history from which the Court could derive support for its interpretation was a single, obscure dialogue between Congressman Marcantonio and Hobbs.[189] However, as was previously discussed,[190] that exchange cannot be construed as a condonation by Hobbs of violence directed toward achieving a "legitimate" end. The Court's reliance on this exchange in support of its interpretation of the statute is unwarranted if not totally misplaced.

The third justification advanced by the Court scarcely deserves mention. The Court simply noted that "[i]n the nearly three decades that have passed since the enactment of the Hobbs Act, no reported case has upheld the theory that the Act proscribes the use of force to achieve legitimate collective-bargaining demands."[191] The Court, without explanation, here cited *Green* and *Kemble* as cases allegedly involving "illegitimate" labor demands, and cited *Caldes* as a case involving "legitimate" labor demands where the indictment was properly dismissed. These cases, however, are either unpersuasive or simply not supportive of the Court's theory.

Nevertheless, from all this the Court concluded that Congress did not intend to legislate the manner in which labor enforced its various demands, since "[i]t is unlikely that if Congress had indeed wrought such a major expansion of federal criminal jurisdiction in enacting the Hobbs Act, its action would have so passed unobserved."[192] To say the least, this is a rather novel theory of statutory interpretation and one certainly not adhered to in other contexts.[193]

Finally, in justifying its narrow interpretation of the Hobbs Act, the Court trotted out its "parade of horribles." The Government's theory, the Court said:

> [W]ould cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine.[194]

189. *See* text accompanying note 105 *supra*.
190. *See* text accompanying notes 105-09 *supra*.
191. 410 U.S. at 408.
192. *Id.* at 410.
193. For example, it apparently "passed unobserved" for roughly a hundred years that in the Civil Rights Act of 1866 Congress intended to prohibit purely private as well as public discrimination. However, this did not prevent the Court from so holding in the first case where the issue was squarely presented. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).
194. 410 U.S. at 410 (footnotes omitted).

In the first place, as has been suggested before, a reasonable interpretation of the Hobbs Act need *not* include within its ambit *all* violence connected with a strike; in many instances either the victim or the purpose is different than would be required in order to constitute "extortion."[195] Moreover, if it is unlikely that Congress intended to severely punish a person who slices tires in the course of a strike to obtain $.50 more per hour, it is certainly no more likely that Congress intended to impose such punishment when that particular conduct occurs in the course of a strike to obtain additional but unwanted work for union members; yet that result could be reached even under the Court's theory. There is, in short, simply no logical relationship between the Court's concern over excessive punishments and its theory that the Act should therefore be limited to conduct having an "illegitimate" objective.

In addition, the Court apparently lost sight of the fact that the Hobbs Act, like many other statutes, merely establishes the *maximum* possible punishments. While it is true that the opponents of the Hobbs Act thought these sanctions might be potentially excessive if applied to the so-called "milder" forms of labor violence,[196] the majority in Congress either felt otherwise or knew that judges would exercise the discretion inherent in their function and mold the punishment to fit the crime.[197] In any event, the Court's concern that an overzealous tire slasher might be fined to the point of impoverishment and incarcerated for the better part of his life is neither a necessary nor even a proper basis for construing the statute the way the Court did.

In sum, none of the reasons advanced by the Court for its reading of the statute can withstand hard analysis. The Court's distortion of the legislative history is particularly disturbing, and it was primarily this that led Mr. Justice Douglas, dissenting, to state:

> At times, the legislative history of a measure is so clouded or obscure that we must perforce give some meaning to vague words. But where, as here, the consensus of the House is so clear, we should carry out its purpose no matter how distasteful or undesirable that policy may be to us . . . .[198]

The purpose, which Mr. Justice Douglas found evident from a careful review of the legislative history, was simply that "[t]he regime of violence, *whatever its precise objective*, is a common device

195. *See* text following note 109 *supra*.

196. *See, e.g.*, 89 CONG. REC. 3201 (1943), where Congressman Celler voiced the concern that the bill may permit simple assaults to be converted into felonies.

197. *See* Livers v. United States, 185 F.2d 807, 809 (6th Cir. 1950) ("In the enactment of our national laws against crime, the Congress has vested United States District Judges with wide discretion in assessing punishment within the limits of the various federal statutes.").

198. 410 U.S. at 418 (Douglas, J., dissenting) (footnotes omitted).

of extortion and is condemned by the Act."[199] With respect to the majority's position, he bluntly but correctly observed that "[t]he Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do."[200]

C. Current Ambiguities in the Law

Although the *Enmons* decision resolved the specific issue that was before the Court, the opinion at the same time created two glaring points of uncertainty. First, the Court's holding that the Act does not apply to the enforcement of "legitimate" union demands leaves open the question of what exactly an "illegitimate" union demand might be. At the very least, if the sought-after payment would itself be illegal, whether obtained through force or otherwise, a demand for such payment would potentially be within the purview of the Hobbs Act even under the *Enmons* decision. This would appear to cover certain proscribed payments by an employer to any representative of his employees,[201] as well as employer payments into pension funds, check-off payments, and other such payments when not done according to the strict mandates of the law.[202] Arguably, the payment of wages in excess of either mandatory wage guidelines or the terms of a collective bargaining agreement containing a no-strike clause could be included as well. True "featherbedding" would almost certainly be considered a proscribed objective.[203] An employer's requirement that his employees pay union dues in the absence of a valid union security agreement or each individual's voluntary agreement to pay would also seem to qualify,[204] as would the illegal recognition of a union.[205]

More troublesome, however, are those objectives which are not intrinsically "unlawful" but which are, nevertheless, susceptible to being called "illegitimate." The existance of this category is a nec-

199. *Id.* (emphasis added).
200. *Id.* at 413.
201. *See* United States v. Quinn, 514 F.2d 1250 (5th Cir. 1975), *cert. denied*, 424 U.S. 955 (1976). Under the circumstances of that case, the payment of the money was itself thought by the court to be an independent violation of the Taft-Hartley Act, 29 U.S.C. § 186(a) (1976), which generally prohibits payments by an employer to the representative of his employees, thus making it an "illegitimate" objective under the *Enmons* approach.
202. *See, e.g.*, 29 U.S.C. § 186(c)(4) & (5) (1976) (pertaining to payments made under check-off authorizations and employer contribution into pension funds).
203. *See* 29 U.S.C. § 158(b)(6) (1976); United States v. Arambasich, 597 F.2d 609 (7th Cir. 1979); United States v. Callahan, 551 F.2d 733 (6th Cir. 1977).
204. *See* 29 U.S.C. § 158(a)(3) (1976).
205. *See* United States v. Jacobs, 543 F.2d 18 (7th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977).

essary, though perhaps unintended,[206] corollary of the fact that the Court in *Enmons* clearly reaffirmed the *Green* decision. In point of fact, the objective of the union in *Green* was not independently unlawful. Although the union may have been seeking wages for services which the employer felt he did not need, the union members were apparently willing to actually do the work, and thus *Green* was not a true case of "featherbedding" in the statutory sense.[207] What other kinds of "illegitimate" but not unlawful objectives the Court might have in mind is subject only to speculation.[208]

As has been shown, one source of ambiguity stems from the Court's conclusion in *Enmons* that "illegitimacy" of the objective is a necessary element of a Hobbs Act offense. Another ambiguity which the decision creates is whether physical force or violence is also a necessary element. Under prior case law it clearly was not. One of the recurring issues in the cases involving demands for personal payoffs to union officials was whether such demands, when backed *merely* by threats of strikes, picketing, or other presumably peaceful "labor difficulties," could constitute extortion under the Hobbs Act, or whether either actual force or threatened force was required. The courts had consistently held that "[r]easonable fear of economic loss was enough to come within the statute."[209] The court in *United States v. Varlack*[210] explained:

> [I]t is . . . clear that it was not the intention of the Congress to interfere with the exertion of peaceful economic pressures by a union through the medium of strikes to achieve *legitimate* labor objectives. But it does not follow . . . that only violence or threats of violence are covered by the Act and that the Act is not violated when union leaders or representatives obtain . . . personal enrichment by using their . . . influence to instill in the minds of the employers with whom they deal a fear of work stoppages or the prolongation of strikes.[211]

206. The Court may have simply misread the *Green* decision, for there is some suggestion in the opinion that the Court viewed the facts in *Green* as substantially similar to those in the *Local 807* case. *See* 410 U.S. at 408. This, however, is not accurate in that, in at least some instances, the union members in *Local 807* did not even offer to do any work, thus making it a case of true "featherbedding," and, under *current* law at least, an illegitimate union objective. *See* note 151 *supra*. There was no suggestion of that in *Green*.

207. *See* note 151 *supra*; *see also*, United States v. McCullough, 427 F. Supp. 246 (E.D. Pa. 1977).

208. In United States v. Warledo, 557 F.2d 721 (10th Cir. 1977), a non-labor case, members of a certain Indian tribe were indicted for attempting to obtain money from a railroad to redress past wrongs against the tribe. Payment by the railroad would not, of course, have been illegal, and they alleged that their belief in the validity of their claim was sufficient to bring them within the *Enmons* exception. The Court of Appeals disagreed. "To say that the pursuit of a payment from the railroad for *alleged* past wrongs is not wrongful taxes the statutory language to a highly unreasonable degree." *Id.* at 730.

209. United States v. Stirone, 262 F.2d 571, 575-76 (3d Cir. 1958).

210. 225 F.2d 665 (2d Cir. 1955).

211. *Id.* at 669.

Thus, the case law seemed to stand for the symmetrical proposition that it was extortion if *either* the ends *or* the means were independently illegal.[212] By requiring an "illegitimate" objective in every case, *Enmons* necessarily destroyed this formulation, but it is not clear what the decision provides by way of substitution. There are two alternatives: Actual legality of the means used is no longer a relevant factor at all, thus making the "illegitimacy" of the ends both a necessary and a sufficient condition of the violation; or *both* illegitimate ends *and* otherwise illegal means (violence or threats of violence) are now necessary for a violation of the Act.

The Court's statement in a footnote to its discussion of the term "wrongful," in *Enmons* is relevant to this issue:

> The Government suggests a convoluted construction of "wrongful." It concedes that when the means used are not "wrongful," such as where fear of economic loss from a strike is employed, then the objective must be illegal. If, on the other hand, "wrongful" force and violence are used, even for a legal objective, the Government contends that the statute is satisfied.[213]

The Government's theory was, of course, consistent with the either/or proposition suggested above. In this footnote the Court was clearly rejecting the proposition that the means alone can render a demand illegal. Whether they were also rejecting the proposition that the ends alone can render a demand illegal, is only problematical. That such was *not* the Court's intent can perhaps be deduced from the fact that the Court also said that "the Hobbs Act has properly been held to reach instances where union officials threatened force or violence against an employer in order to obtain personal payoffs . . . ."[214] The Court here cited three lower court cases which stand unequivocally for the proposition that fear of economic loss, brought about by otherwise peaceful and not illegal strikes or picketing, can rise to the level of extortion under the Hobbs Act, provided the end being sought is itself an illegitimate one.[215] Presumably, the Supreme Court was of the same view.

On the other hand, there *is* specific language in the legislative history to suggest that the typical "shake down," where a union official uses his power to call or prolong strikes as a form of threat

212. Comment, *Featherbedding and the Federal AntiRacketeering Act*, 26 U. CHI. L. REV. 150, 159 (1958).
213. 410 U.S. at 400 n.3.
214. *Id.* at 400 (footnote omitted).
215. United States v. Iozzi, 420 F.2d 512 (4th Cir. 1970); United States v. Kramer, 355 F.2d 891 (7th Cir.), *cert. granted and case remanded for resentencing*, 384 U.S. 100 (1966); Bianchi v. United States, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955).

to induce an employer to make personal payoffs, is not extortion in the statutory sense. Presumably, Congress intended to not involve itself through the Hobbs Act in otherwise peaceful strikes and picketing. In dialogue supporting this proposition, Congressman Sumner stated: "There have been complaints that in the case of strikes an attorney has gone in and asked an operator something like $15,000 or $20,000 as a shakedown to stop a strike. Is there anything in this bill about that?"[216] Congressman Jennings responded: "Not a thing. This does not have a thing in the world to do with strikes."[217]

Since *Enmons*, there have been a number of cases where the courts have indicated that union officials can be convicted for extorting money or other benefits through threats of "economic harm" to an employer.[218] Apparently, the implications of *Enmons* on this issue and the significance of that bit of legislative history have not been discussed. This, however, is a matter of some concern. Where the end is affirmatively illegal, as in the personal payoff situations, perhaps the threatened use of economic force can be called "extortion" without doing undue violence to the term. However, where the "illegality" flows from the fact that the objective is inconsistent with a previously agreed to contract term, one begins to get a little uneasy. Is it proper to make it a "crime" to strike to achieve such an objective? Regardless of one's judgment on this question, it is quite another matter to label as "extortion" the threatened use of *otherwise* peaceful and legal economic force for the purpose of achieving an end which is itself *merely* "illegitimate," as in the *Green* case. Although it seems unlikely that anyone would ever be convicted of extortion for striking in order to require a railroad to hire a "fireman" for a diesel locomotive, such a result flows logically from the *Enmons* decision. This is because the Court in *Enmons* characterized the objective of the union in *Green* as being "illegitimate" even though it was not in fact affirmatively illegal, and suggested that the use of economic force with respect to such ends can be considered extortionate. On the other hand, if the Court did not intend that result, one is necessarily left with the conclusion that the theoretical underpinnings of *Enmons* are hopelessly ambiguous. In either event, some clarification by the Court is certainly in order.

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216. 91 CONG. REC. 11912 (1945).

217. *Id.*

218. *See, e.g.*, United States v. Arambasich, 597 F.2d 609 (7th Cir. 1979); United States v. Nell, 570 F.2d 1251 (5th Cir. 1978); United States v. Daley, 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978).

IV. PENDING LEGISLATION

At the time of the *Enmons* decisions, revisions to the Hobbs Act were already in the process of formulation. In 1966, Congress created the National Commission on Reform of Federal Criminal Laws,[219] commonly called the "Brown Commission" after its chairman, Edmund G. Brown, former Governor of California. The mandate of this Commission was to study the existing body of federal criminal laws, including the Hobbs Act, and to make recommendations to Congress for revision and recodification. In 1971 the Commission submitted its final report, consisting primarily of a proposed draft of a federal criminal code with brief comments for each section.[220] Under this code, extortion, a separate offense under the Hobbs Act, was simply treated as a form of theft. Section 1732 provided that: "A person is guilty of theft if he: . . . (b) knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat . . . ."[221] Section 1741 further provided that

> 'threat' means an expressed purpose, however communicated, to (i) cause bodily injury in the future to the person threatened or to any other person; or (ii) cause damage to property; or (iii) subject the person threatened or to any other person to physical confinement or restraint . . . or (x) bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or (xi) cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes . . . .[222]

Part (x) of the definition stated that a strike or boycott which is not for the purpose of obtaining benefits for the whole group, as in the typical "payoff" or "shakedown" situation, is to be considered illegal. Presumably this is true even though the strike or boycott is an otherwise peaceful one. It also seems clear from the structure of the definition that violence intended to coerce the settlement of a strike (*i.e.*, causing bodily injury, property damage, or physical restraint to obtain an otherwise legitimate group benefit) is also illegal. Finally, as the comments to this section of the draft make clear, part (xi) was clearly designed to exclude from the coverage of the section any threatened or actual enforcement of a union security agreement as long as the dues received under threat of dis-

219. Act of Nov. 8, 1966, Pub. L. No. 89-801, 80 Stat. 1516, *as amended*, Act of July 8, 1969, Pub. L. No. 91-39, 83 Stat. 44.

220. *Reform of the Federal Criminal Laws: Hearings Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part I*, 92d Cong., 1st Sess. 129 (1971) [hereinafter cited as *Hearings, Part I*].

221. *Id.* at 359.

222. *Id.* at 373-74.

charge were used for lawful union purposes.[223] Thus, the Brown Commission draft would not have accomplished any major changes in the Hobbs Act as it had been construed before *Enmons*.

The Brown Committee report was submitted to Congress, where it was referred to the Senate and House Committees on the Judiciary and to the President, who created a Criminal Code Revision Unit within the Department of Justice for further study and revision. The Senate Committee's end product, after two years of hearings, was bill S. 1,[224] introduced by Senators McClellan, Hruska and Ervin on January 4, 1973.[225] Although it was derived from the Brown Committee draft, S. 1 differed from that draft in many ways. With respect to the extortion provisions, S. 1 opted in favor of a return to the carefully hammered out language of the existing Hobbs Act. Section 2-9C3 provided that: "A person is guilty of extortion if he intentionally obtains services or property of another from another person, with the consent of the other person, where such consent is induced by wrongful use of actual or threatened force, violence or fear, or under color of official right."[226]

The section-by-section explanation of S. 1 simply stated that "[t]he language is taken from [section] 1951 to carry forward its judicial construction,"[227] presumably including, insofar as Supreme Court cases are concerned, the *Green* decision. It is significant to note that the *Enmons* decision, appearing on February 22, 1973, had not been handed down at the time this explanation was written.

In the meantime, the Criminal Code Revision Unit of the Justice Department had also been working on a draft criminal code. S. 1400[228] was introduced by Senators Hruska and McClellan on March 27, 1973[229] after *Enmons* had been rendered, and was clearly drafted with the intent of repudiating the decision. Section 1722(a) provided that: "A person is guilty of an offense if he knowingly obtains property of another by force, or by threatening or placing another person in fear that any person will be subjected to bodily

223. *Id.* at 374.
224. S. 1, 93d Cong., 1st Sess. (1973); *Reform of the Federal Criminal Laws: Hearings on S. 1, S. 716, S. 1400, S. 1401 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part V*, 93d Cong., 1st Sess. 4211-748 (1973) [hereinafter cited as *Hearings, Part V*].
225. 119 CONG. REC. 92 (1973).
226. *Hearings, Part V, supra* note 224, at 4346.
227. *Id.* at 4786.
228. S. 1400, 93d Cong., 1st Sess. (1973), *Hearings, Part V, supra* note 224, at 4862-5197.
229. 119 CONG. REC. 9634 (1973).

injury or kidnapping or that any property will be damaged."[230] The explanation to this section of the bill said that it was "worded to overcome the adverse effects of a recent Supreme Court opinion construing the legislative intent as to one aspect of the existing statute in an unusually restrictive manner."[231] Presumably, the authors of S. 1400 believed that they accomplished this by the omission of the word "wrongful" in the definition of the crime, since the rationale of the *Enmons* decision hangs fairly heavily on the presence of that word in the Hobbs Act.

Hearings were subsequently held on all three versions of a proposed federal criminal code—the Brown Commission draft, S. 1, and S. 1400. On January 15, 1975, Senator McClellan, for himself and several other Senators, introduced a new S. 1[232] which incorporated elements of all three of the proposals. Significantly, this S. 1 adopted the language of S. 1400 insofar as extortion was concerned, and the draft report clearly indicated that the Subcommittee intended to overrule the *Enmons* decision.[233] Some doubt was expressed, however, as to whether the language used was capable of having that effect. A statement by the Associated Builders and Contractors suggested that in order to make the matter clear the following be added after the final word "damaged" in section 1722(a): "Notwithstanding that the same acts or conduct may also be a violation of state or local law, and notwithstanding that such acts or conduct were used in the course of a legitimate labor dispute or in the pursuit of legitimate union or labor ends or objectives."[234] The second S. 1, with some amendments, was reported by the Subcommittee on Criminal Laws and Procedures to the full Committee on the Judiciary on October 21, 1975, where the bill was allowed to die.

The next step was taken on May 2, 1977, when Senators McClellan and Kennedy introduced S. 1437,[235] the Criminal Code Reform Act of 1977.[236] This bill allegedly represented a compromise on several controversial and important points, the lack of agreement on which had kept prior bills from moving through the legislative

230. *Hearings, Part V, supra* note 224, at 5966.
231. *Id.* at 4847.
232. S. 1, 94th Cong., 1st Sess. (1975).
233. SENATE COMMITTEE ON THE JUDICIARY, 94TH CONG., 2D SESS., DRAFT REPORT TO ACCOMPANY S. 1 644-59 (Comm. Print 1975).
234. *Reform of the Federal Criminal Laws: Hearings on S. 1 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part XII*, 94th Cong., 1st Sess. 215 (1975).
235. 123 CONG. REC. S6831 (daily ed. May 2, 1977).
236. S. 1437, 95th Cong., 1st Sess. (1977), *Reform of the Federal Criminal Laws: Hearings on S. 1437 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part XIII*, 95th Cong., 1st Sess. 9485-792 (1977) [hereinafter cited as *Hearings, Part XIII*].

process. The extortion offense, however, was again simply defined, as obtaining property of another "(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or (2) under color of official right."[237]

The Committee Report on S. 1437[238] contains an excellent summary of the then existing law with respect to extortion under the Hobbs Act and indicates approval of the judicial decisions holding that "fear" under the statute applies not only to fear of physical violence but also fear of economic harm to the victim's property or business. Moreover, the report is unequivocal in its repudiation of the *Enmons* "legitimate objectives" rationale. Noting that such an exception had not been recognized with respect to extortion by other persons, the Committee felt that labor union officials were not entitled to such a privileged treatment.

> The thrust of an extortion statute should be to punish violent extortionate means to obtain the property of another regardless of the legality of the ends sought, and this principle should apply in the collective bargaining context as well as elsewhere. Thus, an employer who blows up a union office or causes a union official to be assaulted in order to instill fear and thereby obtain property of the union ought to be guilty under the Act irrespective of whether the property could have been obtained lawfully through collective bargaining. And the same should be true in the reverse situation. Accordingly, the Committee has proposed in effect to overturn the *Enmons* result by treating the parties engaged in a labor dispute no differently from other persons in terms of the applicable prohibitions under this section, which is limited to extortionate means involving actual or threatened violence.[239]

The Committee Report, however, also responded to the concern expressed by the *Enmons* Court that minor acts of picket line violence might, but for a narrow reading of the statute, be elevated into a federal felony. The report noted that

> in the Committee's view such acts do not fall within the purview of the Hobbs Act (nor should they be Federally punishable) since there is no intent thereby to obtain the employer's property through the use of force and the acts do not in fact cause the employer to part with his property; in short, such isolated acts of violence do not partake of the nature of extortion.[240]

To insure that the Act would be construed in that fashion, the proposed extortion provision contained an additional section specifically recognizing that "[i]t is an affirmative defense to a prosecution under subsection (a)(1) that the threatened or feared injury or damage was minor and was incidental to peaceful picketing or other concerted activity in the course of a bona fide labor

237. *Id.* at 9602.
238. S. REP. NO. 605, 95th Cong., 1st Sess. (1977).
239. *Id.* at 624-25.
240. *Id.* at 624.

dispute."[241] Senator Kennedy, who introduced S. 1437 in the Senate, explained that "a defense is added to the extortion provision to make it clear that minor incidents occuring in the course of legitimate labor picketing are not punishable under the extortion statute."[242]

Immediately thereafter, however, Senator Kennedy introduced an amendment to the extortion provision which deleted the "affirmative defense" section altogether and substituted the following:

> (b) PROOF.—In a prosecution under subsection (a)(1) in which the threat or fear is based upon conduct by an agent or member of a labor organization consisting of an act of bodily injury to a person or damage to property, the pendency at the time of such conduct, of a labor dispute, as defined in 29 U.S.C. 152(9), the outcome of which could result in the obtaining of employment benefits by the actor, does not constitute prima facie evidence that property was obtained 'by' such conduct.[243]

In Senator Kennedy's view, the amendment simply clarified existing law, which, as he understood it, required proof not only of acts of violence but also of the fact that the violence was done with the intent of extorting. Beyond saying that and restating what the amendment itself said directly,[244] he offered no explanation.

Senator Thurmond's remarks, on the other hand, were considerably more enlightening. In explaining his lack of objection to the amendment, he noted that:

> This amendment would add a "proof" subsection designed to prevent a trial judge from holding that, in a case described in the new subsection, mere proof that personal injury or property damage occurred during a labor dispute constitutes a sufficient showing of the causal relationship between the obtaining of property and the threat of fear based on that injury or damage to justify submission of that issue to the jury. It prevents such a holding directly, by providing that proof of the coincidence of the labor dispute and the injury or damage in such a case is not "prima facie evidence" of the causal relationship. It is true, of course, that such a causal relationship sometimes does exist where injury or damage occurs during a labor dispute. This proposed subsection, however, is based on the belief that where there is a cause and effect relationship, or the intent to obtain property by means of a threat or fear resulting from injury or damage, it should be possible to prove, in addition to that coincidence, some other circumstances adding to the strength of the inference of causation.
>
> The proposed subsection does not address the question of which particular additional circumstance or circumstances, when proven along with that coincidence, will suffice to justify the submission of the issue to the jury. One which clearly would be sufficient in many cases to avoid a directed verdict is the circumstance that the defendant was, or conspired with, a person negotiating on behalf of the union involved in the labor dispute. The same result might obtain, where the repetitive or systematic

241. *Hearings, Part XIII, supra* note 236, at 9602-03.
242. 124 CONG. REC. S12 (daily ed. Jan. 19, 1978).
243. *Id.* at S17.
244. *Id.* at S17-18.

> nature of property damage, or its exact timing, contributed to an inference, based also on the fact that a labor dispute was pending at the time the damage was done, that the damage was purposeful rather than mindlessly vindictive.[245]

The amendment was adopted[246] and S. 1437 passed the Senate on January 30, 1978;[247] however, the bill was allowed to die in the House.

Undaunted by this lack of prior success, Senator Kennedy, on behalf of himself and several other Senators, reintroduced a proposed recodification of the federal criminal laws[248] in the Criminal Code Reform Act of 1979, S. 1722.[249] As introduced, the extortion provisions of this bill were identical to those as contained in S. 1437 as passed by the Senate.

Hearings were again held on this bill, and to at least some of the representatives of management the extortion provisions of the bill were apparently satisfactory. The published comments of the Associated Builders and Contractors, Inc. noted, for example, that the omission of the word "wrongful" in the Act properly eliminated the "legitimate objectives" exception read into the Hobbs Act by the Court in *Enmons*.[250] Furthermore, the comment stated that, properly construed, the "proof" provision was acceptable as well. In their view, if the violence was something more than a minor and unrelated incident, and the employer could testify "that there was a direct connection between the violence and his decision to increase benefits,"[251] then the requirements of the section would be satisfied and a prima facie case of violation made out.

For the most part representatives of organized labor agreed with this interpretation of the proposed statute, and, for that reason, were vehemently opposed to it. They objected to the overruling of the *Enmons* decision by elimination of the term "wrongful" in the definition of extortion on many of the same policy grounds that were advanced by the Court in that case. Witnesses cited numerous reasons why *Enmons* should not be overruled: The danger of making minor picket line misconduct a federal criminal felony; the danger of overactive and politically ambitious prosectors using this as an excuse to intrude unnecessarily into strike situations; the resulting unwarranted incursion of federal jurisdiction into an

245. *Id.* at S17.
246. *Id.* at S18.
247. *Id.* at S860.
248. 125 CONG. REC. S12204 (daily ed. Sept. 7, 1979).
249. S. 1722, 96th Cong., 1st Sess. (1979), *Reform of the Federal Criminal Laws: Hearings on S. 1722, S. 1723 Before the Senate Committee on the Judiciary, Part XIV*, 96th Cong., 1st Sess. 11090-484 (1979) [hereinafter cited as *Hearings, Part XIV*].
250. *Hearings, Part XIV*, *supra* note 249, at 10707.
251. *Id.*

area traditionally left to the states; the disruption of the balance already struck by Congress in the labor-management relations area; the chilling effect upon the exercise by employees of other federally protected rights; and the existence of other remedies for labor violence.[252]

Moreover, the "proof" provision was regarded by labor as inadequate to guard against the evils that would result from making labor activity generally subject to the statute. Thomas X. Dunn, General Counsel for the Building and Construction Trades Department, AFL-CIO, stated:

> It is clear that section 1722(b) is designed to create an additional burden of proof in prosecutions for misconduct which occurs in the course of a labor-management dispute. The Government would be required to establish a nexus between the alleged misconduct and the obtaining of otherwise legitimate employment benefits. As a practical matter, however, this burden of proof could be satisfied easily in almost every economic strike where misconduct occurs. It appears that all that the Government need do to satisfy its burden is present the employer involved in the strike who will testify that the alleged violence or threat of violence was a factor in his decision to agree to workers' demands for higher wages or other employment benefit.
>
> Thus, section 1722(b) would not be an effective means of discouraging the Government from applying the proposed extortion statute to any misconduct which occurs in the course of an economic strike.[253]

Robert M. Baptiste, Counsel for the International Brotherhood of Teamsters, expressed a similar sentiment:

> While the amendment was proposed in "recognition that tempers often flare in labor disputes" and all strike-related misconduct should not be a Federal criminal offense, we submit that the proof provisions can so easily be satisfied that virtually all economic strikes where misconduct occurs could be subject to this new Federal extortion penalty.[254]

Lance Compa, Washington Representative of the United Electrical, Radio and Machine Workers of America, was fearful of the undesireable consequences that could result if the interpretation advanced by Senator Thurmond[255] was taken as controlling. He stated:

> Furthermore, Senator Thurmond offered a detailed interpretation of the Kennedy Amendment that constitutes dangerous legislative history. Senator Kennedy made no careful explanation of his amendment. Senator Thurmond said the proof requirement would not be necessary if the defendant "was or conspired with" a union negotiator or if the damage was "repetitive," "systematic" or "purposeful rather than mindlessly vindictive."
>
> Applying this interpretation would, first of all, chill any contact between a union negotiating committee and the rank and file members. In-

252. *Id.* at 10045-48, 10691-92.
253. *Id.* at 10693.
254. *Id.* at 10049.
255. *See* note 245 & accompanying text *supra.*

stead of keeping a firm hand on the strike—which is essential if the committee is to be effective at the bargaining table—a committee will be forced into a "hear no evil, see no evil" position, sequestered from the membership in order to avoid possible prosecutions. Even so, a prosecutor out to nail an aggressive union leader could frighten or entice with promises of immunity a rank and file member to implicate the union official in some damage.

Second, the "purposeful rather than mindlessly vindictive" interpretation effectively removes any protection the Kennedy Amendment might have provided, since any damage in a strike, misguided as it may be, is connected to the purpose of winning the strike.[256]

As drafted, the extortion provisions of S. 1722 represented a compromise which could not be held together because of the strong opposition of organized labor. This, however, opened the door anew to the full range of possibilities including reaffirming the *Enmons* approach in its entirety, on the one hand, or providing no special exemptions for labor, on the other, as well as several intermediate possibilities.

Eventually, a new compromise was hammered out. It was agreed that the basic definition of the offense of extortion would remain the same, but that the "proof" provision would be replaced with a "bar to prosecution" provision; the "grading" and "jurisdiction" provisions remained unchanged. In relevant part, the extortion section, as finally approved and reported out by the Senate Judiciary Committee, reads as follows:

§ 1722. EXTORTION.

(a) **OFFENSE.**—A person is guilty of an offense if he obtains property of another—

(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or

(2) under color of official right.

(b) **BAR TO PROSECUTION.**—It is a bar to prosecution under this section that the offense occurred in connection with a labor dispute as defined in 29 U.S.C. 152(9) to achieve legitimate collective bargaining objectives, unless there is clear proof that the conduct which constitutes the threat or placing in fear required under subsection (a)(1) consists of a felony and the conduct was engaged in for the purpose of causing death or severe bodily injury in order to secure such objectives; and the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that—

(A) the facts establish the existence of the additional elements of the offense required under this subsection;

(B) a federal prosecution should be commenced under this section; and

(C) the State is unable or unwilling to proceed with any equivalent prosecution relating to such conduct.[257]

256. *Hearings, Part XIV, supra* note 249, at 10764.

257. S. 1722, 96th Cong., 2d Sess. (1980) (as reported with amendments).

The Committee Report summarized the compromise in these terms: "The Committee has concluded over the objection of a substantial minority that, except in the circumstances set forth in subsection (b) of section 1722, for the purposes of this bill the *Enmons* decision should not be modified."[258] The Committee, in other words, was willing to accept the *Enmons* proposition that the "legitimacy" of a union's objective was sufficient to justify even the use of physical violence to achieve it, at least in the sense of rendering the violence not illegal under federal law. "On the other hand, the Committee believes that the thrust of an extortion statute should be to punish violent extortionate means to obtain the property of another regardless of the legality of the ends sought and has carried forward current law to that effect in situations not involving a labor dispute."[259]

That is what the proposed statute says, but what it means is another matter. For example, S. 1722 does nothing to clarify the two main ambiguities of the existing case law. By carrying forward the *Enmons* rationale of "legitimate" union objectives, the proposed statute also carries forward the ambiguities associated with that rationale.[260] Furthermore, the Committee Report on the bill does nothing to clarify the ambiguity. At one point the report notes that the Committee intended to reaffirm the *Enmons* principle "to the effect that labor officials were not covered for their extortionate activities against employers in the course of a labor dispute, if the objective sought was *a permissible goal of collective bargaining*."[261] Similarly, in discussing the meaning of the phrase "legitimate collective bargaining objectives," the Committee Report notes that this "encompasses activities to secure *non-corrupt* labor union objectives even if, as in *Enmons*, those activities would violate other laws and excludes such objectives as efforts to obtain personal payoffs or payments for superfluous services."[262]

The difficulty, as with the *Enmons* decision itself, is in fitting the *Green* facts into such a formulation. Although the objective sought in *Green* was certainly to obtain "payments for superfluous services," in the colloquial sense, as a legal matter the objective was both "non-corrupt" and "a permissible goal of collective bargaining"; yet a violation was found to exist in that case, undoubtedly because of the presence of violence. The Committee, like the Court in *Enmons*, obviously did not intend to overrule *Green*. However, since the presence of violence is no longer a sufficient

258. S. REP. No. 553, 96th Cong., 2d Sess. 645 (1980).
259. *Id.*
260. *See* § III-C of text *supra*.
261. S. REP. No. 533, 96th Cong., 2d Sess. 649 (1980) (emphasis added).
262. *Id.* at 651 (emphasis added).

condition for a violation, the reconciliation of results of *Green* with the wording of the proposed statute is somewhat less than obvious.

With respect to the second major ambiguity, the Committee Report does make it clear that the damage to property referred to in the definition of extortion includes only *physical* damage to property and does not include mere economic loss or injury. Those kinds of Hobbs Act injuries were, the Committee Report notes, intended to be covered by the proposed section on blackmail rather than the extortion section.[263] Section 1723 provides that "a person is guilty of an offense [of blackmail] if he obtains property of another by threatening or placing another person in fear that any person will . . . (4) improperly subject any person to economic loss or injury to his business or profession . . . ."[264] The Committee Report comments that

> [t]his carries forward . . . the present reach of the Hobbs Act, . . . as interpreted by judicial decisions. It is designed to make clear that this section does not reach legitimate activity, such as strikes, boycotts, or picketing activity undertaken in support of such objectives as increased wages or improved working conditions for employees.[265]

The significance of this language should be readily apparent. The word "improperly," as used in the proposed section on blackmail, is obviously intended to have the same connotation as the word "wrongful" contained in the Hobbs Act and construed by the Supreme Court. This means that the objective must be an "illegitimate" one. So construed, the blackmail section ties in nicely with the extortion section. If the objective being sought is other than a "legitimate" one, the extortion section is relevant if the "means" involve threats of physical damage to person or property, but if the "means" involve mere threats of economic injury, the blackmail section is relevant.

With respect to the latter, an unduly broad definition of "illegitimate" (*i.e.*, broad enough to encompass the objective sought by the union in *Green*) would create some difficult problems. It is *highly* unlikely that the Committee intended to include within the offense of blackmail a union's peaceful picketing to cause an employer to add jobs which he considers unnecessary or superfluous. However, the ambiguities inherent in the central concept of the two sections—namely, the fuzzy notion of "legitimate" versus "illegitimate" ends—makes the statute, in theory at least, susceptible to that construction.

To summarize: If, under the extortion section, the union's objective is other than a "legitimate" one, whatever that means, it is

263. *Id.* at 648 n.58.
264. S. 1722, 96th Cong., 2d Sess. (1980) (as reported with amendments).
265. S. REP. No. 553, 96th Cong., 2d Sess. 657 (1980) (footnote omitted).

not covered by the bar under subsection (b) and a prosecution can commence under the main provisions of the section.[266] On the other hand, even if the union is attempting to achieve "legitimate collective bargaining objectives,"[267] the use of force to that end can still be considered extortion if the requirements spelled out in the "unless" clause of subsection (b) are all met. With respect to these, the Committee Report, which presumably represents an authoritative interpretation of the language, deserves to be quoted in full, because it adds things which are certainly not apparent on the face of the language itself:

> The exception to the bar stated in subsection (b) is intended to spell out the exclusive circumstances which may give rise to a Federal extortion prosecution involving unlawful conduct that occurs during a labor dispute to achieve legitimate collective bargaining objectives. In essence this exception adds two elements to the crime. First, the government must prove that the defendant engaged in conduct against the person which, if there were Federal jurisdiction, would be a felony under the code. This element requires an act and not a mere statement or threat to act. Second, the government must prove that the defendant acted not merely "knowingly" as that term is used in the code but with the preestablished intent to (a) cause death or severe bodily injury, and (b) by so doing to force acceptance of the union's demands. "Severe bodily injury" means protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working.
>
> The phrase "clear proof," which has its origin in Section 6 of the Norris-LaGuardia Act (29 U.S.C. Section 106), as used here imposes on the government the obligation to establish by direct evidence that the conduct against the person included in the exception was undertaken for the purpose specified therein. Without such proof, violence, no matter how serious, during a labor dispute is outside the Federal extortion law.
>
> In order to reinforce traditional principles of federalism the bar is not overcome (and the Federal government may not initiate an investigation or prosecution of the illegal conduct) unless the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that (a) the facts establish the existence of the additional elements of the offense required by the exception to the bar; (b) a Federal prosecution should be commenced under this section; and (c) for reasons other than insufficient evidence the State refuses to proceed with a prosecution relating to the conduct against the person specified in the exception to the bar. Such a certification must be based on evidence obtained by or available to the State prior to the Federal government's involvement in the matter; however, once the certification is made, this provision does not limit the Federal government's ability to secure and rely on additional evidence.[268]

Construed in this fashion, it would appear that section 1722 would result in federal prosecution of violence in connection with collective bargaining only in the rarest of situations. The "clear proof" standard has, for example, been a difficult one to meet in

266. *See* text accompanying note 257 *supra.*
267. S. 1722, 96th Cong., 2d Sess. (1980).
268. S. REP. No. 553, 96th Cong., 2d Sess. 651-52 (1980).

Norris-LaGuardia cases, and one could expect it to be a popular and successful ground of defense under the proposed extortion section as well. Similarly, the limits on federal *initiation* of investigations and prosecutions under the extortion section, as suggested by the Committee Report, would severely hamstring the enforcement of the statute. The exclusion of threats to cause property damage and the definition of "severe bodily injury" in terms of "protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working"[269] further limits the circumstances under which the section could be applied to labor violence. Moreover, insufficiency of the evidence as a basis for non-prosecution by the state is not, according to the Committee Report, sufficient to permit federal involvement, an ironic limitation since the state's lack of sufficient evidence may well be attributable to its inability to effectively investigate a crime having interstate dimensions. Finally, the requirement of what amounts to an *affirmative* recommendation from someone at the *highest* levels of the Justice Department that a prosecution be commenced seems to create almost a presumption against prosecution, immediately makes the decision a politically sensitive one, and also suggests that the discretion involved there is somewhat broader than that which would exist otherwise. Nevertheless, the Criminal Code Reform Act of 1979, S. 1722, containing the extortion provision thus described, was reported out favorably by the Senate Judiciary Committee, and is currently pending before the full Senate.

Although most of the attention was initially focused on the Senate committee hearings, the House of Representatives was at this time also quietly proceeding on the matter of revising and recodifying the federal criminal laws. The Brown Commission draft itself was, for example, introduced in the House as H.R. 300,[270] but no hearings were ever held on it. As the reforms began to solidify in S. 1 and S. 1400, "liberal" representatives, alarmed at the direction the legislation was taking, introduced their own proposed code of federal criminal laws, H.R. 10850[271] in 1975 and H.R. 12504[272] in 1976. One commentator has called these "belated and hastily drafted alternatives"[273] to S. 1, and they do not really warrant any detailed analysis.

The first proposal to receive serious consideration by the House was H.R. 6869.[274] This was the so-called "companion bill" to S. 1437

269. *Id.* at 651.
270. H.R. 300, 92d Cong., 2d Sess. (1972).
271. H.R. 10850, 94th Cong., 1st Sess. (1975).
272. H.R. 12504, 94th Cong., 2d Sess. (1976).
273. Schwartz, *Reform of the Federal Criminal Laws: Issues, Tactics, and Prospects*, 41 LAW & CONTEMP. PROB. 12 (1977).
274. H.R. 6869, 95th Cong., 2d Sess. (1978).

which omitted the term "wrongful" (thus overruling *Enmons*) and provided an affirmative defense if the threatened injury was "minor and incidental to peaceful picketing."[275] Organized labor was not, however, happy with the wording of this defense. Lance Compa, Washington Representative of the United Electrical, Radio and Machine Workers of America, stated that:

> H.R. 6869 provides a defense, not a bar to prosecution, that the threatened or feared injury or damage was "minor" and "incidental" to a "bona fide labor dispute." Each of these terms is dangerously unclear. How much damage is minor? What is incidental? Who determines whether there is a bona fide labor dispute? Suppose, for example, what an employer labels a "wildcat" strike is later found by the NLRB to be protected Unfair Labor Practice strike? Where would this leave a prosecution based on the "bona fide" requirement?[276]

The bill was never reported out of committee. That year, however, the Subcommittee on Criminal Justice did report H.R. 13959[277] to the House Committee on the Judiciary. This bill was designed merely to reorganize the federal criminal laws, but not, at that point in time, to change their substance. Thus, it carried forward the law as construed by the Court in *Enmons*.

The next proposed revision to the federal criminal laws appeared in the form of H.R. 6233.[278] As introduced, section 2522 of this bill provided, with respect to the extortion offense that:

> (a) Whoever knowingly threatens or places another person in fear that—
>
> (1) any person will be subjected to bodily injury or kidnapping; or
>
> (2) that any property will be damaged; and thereby obtains property of another, or attempts to do so, commits a class C felony.
>
> (b) It is not a defense to a prosecution for an offense under this section that the conduct constituting the offense was in furtherance of a legitimate objective or activity.[279]

Subsection (b) obviously makes express what the omission of the term "wrongfully" in subsection (a) leaves only implicit—namely, that the *Enmons* approach was to be repudiated in its entirety.

However, when H.R. 6233 was later reintroduced as H.R. 6915,[280] the extortion provision had been changed by the insertion of the term "wrongfully" before the term "obtains" in subsection (a), thus making subsection (a) directly contradictory to the language in subsection (b). Apparently, the legal and logical effect of that was to reaffirm the "legitimate objectives" defense of *Enmons*.[281]

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275. *Id.*
276. *Hearings, Part XIV, supra* note 249, at 10763.
277. H.R. 13959, 95th Cong., 2d Sess. (1978).
278. H.R. 6233, 96th Cong., 1st Sess. (1979). A "working draft" of this bill was also introduced in the Senate as S. 1723, 96th Cong., 1st Sess. (1979), but with subsection (b) omitted.
279. *Id.*
280. H.R. 6915, 96th Cong., 2d Sess. (1980).
281. One logical, but somewhat unlikely explanation, of this draft was that it made

The resolution to that conundrum ultimately adopted by the House Judiciary Committee was simply to delete subparagraph (b), thus apparently leaving the law exactly as it is under *Enmons*.

In this form, H.R. 6915 has been reported out of committee and is currently pending before the House of Representatives. Whether this bill, the Senate version, some compromise worked out by a Senate-House Conference Committee, or no bill at all is to be passed is, of course, purely a matter of conjecture.

V. CONCLUSION

The response of the federal extortion laws to the problem of labor union violence does not reflect favorably on the state of American jurisprudence in three broad respects. First, as a matter of judicial process, serious questions can be raised about the way the courts have handled the extortion statutes. The *Local 807* case was poorly reasoned, and both the majority opinion and the dissent leave the scope of the statute somewhat obscure. The "legitimate objectives" rationale of the *Enmons* decision is not only inconsistent with the prior *Green* decision, thus creating a yet unresolved ambiguity in the statute, but also ignores the overwhelming evidence of a contrary legislative intent. The reasoning in the opinion is weak in other respects as well, and one must share Mr. Justice Douglas's suspicion that the Court's own predelictions about labor policy played a more instrumental role in the decision than the traditional tenets of statutory construction, thus creating, as he also recognized, serious separation-of-powers problems.[282] Specifically, it would appear that the Court used the *judicial process* to achieve a *political result* that probably could not have been achieved by the *legislative process* and which, as indicated by the current status of pending legislation, probably cannot now be reversed by the *legislative process*.[283]

In addition, as a matter of legislative process, the manner in which Congress has responded to the problem leaves much to be

"legitimate objectives" a defense in all cases *except* those involving labor extortion, thus turning on its head the uniquely favored treatment afforded labor unions by the *Enmons* decision.

282. Mr. Justice Douglas noted that "[w]hile we said in . . . [case citation omitted] that it is 'retrospective expansion of meaning which properly deserves the stigma of judicial legislation,' the same is true of retrospective contraction of meaning." 410 U.S. at 419 (Douglas, J., dissenting).

283. The *Enmons* decision is, of course, only one example of this rather curious phenomenon. For an insightful analysis of the underlying constitutional (separation of powers) problems posed by this particular use, or abuse, of the judicial process, see Walker, *The Exorbitant Cost of Redistributing Injustice: A Critical View of* United Steelworkers of America v. Weber *and the Misguided Policy of Numerical Employment*, 21 B.C. L. Rev. 1 (1980).

desired. Although a relatively clear legislative intent can, on some critical points at least, be distilled from the Hobbs Act debates, they do make for agonizing reading for they are often rambling, obscure, filled with many irrelevancies, and in general reflect the lack of a clear understanding of finer nuances of the matter under discussion. Furthermore, the statutory draftsmanship is frequently flawed. The use of the word "wrongful" in the Hobbs Act without a clear indication of what was intended and the ambiguous words and phrases of much of the pending legislation serve only as an invitation to judicial license.

Finally, at a substantive level, the *Enmons* creation of a doctrinal exception applicable *only* to the agents of organized labor, and the currently pending legislation, which, in whole or in part, perpetuates that policy of favored treatment, raise serious and far reaching questions about the quality and the equality of federal criminal justice in this country. Congressman Hobbs said of the Hobbs Act that "[t]his bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card."[284] The view today, however, is that this is not necessarily so. Instead, the prevailing view seems to be that criminality under federal law is as much a matter of the actor's *status* as it is of his *conduct*, and that the status of a labor union official is an especially privileged one in our society.

Admittedly, state law remedies may still be available for labor violence falling within the *Enmons* exception. Furthermore, even an intelligently drafted and impartially construed federal extortion statute may not be the cure-all for labor violence, since much of it does not have extortionate objectives, proof problems will always be somewhat more difficult with respect to this particular form of violent crime, and limited federal resouces may sometimes call for selective enforcement, thus still leaving the bulk of the responsibility for combating this evil to other sources of law. However, given the *almost* universal agreement that labor violence, even when aimed at otherwise legitimate ends, is to be deplored, there are no sound reasons why such violence should not be covered by a federal extortion statute of general application. The deterrent effect alone would be of immense value in promoting a central policy of federal labor law—namely, the encouragement of collective bargaining, reasoned persuasion, and the *peaceful* use of economic power. To that end the *Enmons* decision should be overruled, either by the Court itself after a more reflective review of the legislative history, or by Congress.

284. 89 CONG. REC. 3217 (1943).